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Tuesday
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Briefings on How To Use the Federal Register—
For information on briefings in New York, NY, and Pittsburgh, PA, see announcement on the inside cover of this issue.

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW YORK, NY

WHEN: December 5 at 10:00 a.m.,

WHERE: Room 305A, 26 Federal Plaza, New York, NY

RESERVATIONS: Arlene Shapiro or Stephen Colon, New York Federal Information Center, 212–264–4810.

PITTSBURGH, PA

WHEN: December 8 at 1:30 p.m.,

WHERE: Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA

RESERVATIONS: Kenneth Jones or Lydia Shaw
Pittsburgh: 412–644–INFO
Philadelphia: 215–597–1707, 1709

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Presidential Documents

Title 3—

The President

Proclamation 5571 of November 14, 1986

National Philanthropy Day, 1986

By the President of the United States of America

A Proclamation

The literal meaning of "philanthropy" is "affection for mankind." Throughout our history, we Americans have displayed this trait through our generous charitable giving and our spirit of neighbor helping neighbor. We help each other, and we reach out to help people all over the world. Our tradition of voluntarism embodies a great deal of caring, initiative, and ingenuity in solving problems and improving our communities. It is one of our great strengths as a people.

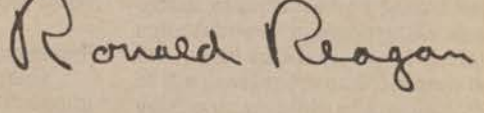
The record of our private sector giving is clear. Our country has more than 800,000 nonprofit philanthropic organizations. They employ more than 10 million people, of whom 4.5 million are volunteers. In 1985 alone, individual Americans, corporations, and foundations contributed almost $80 billion for the charitable work of these organizations, an increase of nearly 9 percent over the previous year's generous total. These efforts are augmented by the volunteer work of nearly half of all teenage and adult Americans; in 1985, 89 million of us each volunteered an average of 3.5 hours every week to help worthy causes.

We can be very grateful to the philanthropic individuals and organizations who have contributed so much to our social welfare, our cultural life, and the improvement of our communities. We can be grateful as well for our American spirit of giving from the heart. And one of the best ways to express our gratitude, of course, is to follow the good and great example of those who see needs and meet them with "affection for mankind."

The Congress, by Senate Joint Resolution 207, has designated November 15, 1986, as "National Philanthropy Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim November 15, 1986, as National Philanthropy Day. I call on the American people and organizations of every kind to observe this day with appropriate ceremonies and activities to recognize the enormous achievements of all who have given of themselves for others, and to rededicate ourselves to the great tasks ahead.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.



[FR Doc. 86-26110
Filed 11-14-86; 4:33 pm]
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1924 and 1944

Section 502 and 515 Rural Housing Loan Policies, Procedures and Authorizations for Purchase of Manufactured Homes and Sites

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding Section 502 Rural Housing and 515 Rural Rental Housing Loan Policies, Procedures and Authorizations. This final rule implements the authority to make loans for the purchase of manufactured homes and sites under Section 502 and Section 515 Rural Housing Programs. This action is taken to incorporate changes required by the Housing and Urban Rural Recovery Act of 1983, Pub. L. 98–181. The intended effect of this action is to provide safe, sanitary and decent housing for eligible families in rural areas.

EFFECTIVE DATE: December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Raymond R. McCracken, Senior Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, Washington, DC 20250, telephone 202–382–1486, or Karen King, Senior Loan Officer, Multi-family Housing Processing Division, Farmers Home Administration, Room 5331, telephone 202–382–1620.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action requires no increase in costs to the Government. There is no impact on proposed budget levels and funding allocations will not be affected because of this action. There will be a modest increase in the reporting requirements required of the public in order to determine eligibility of those receiving the benefits. We have determined that the increase in reporting requirements is not a significant impact and that this regulation maximizes net benefit to society at the lowest net cost.

Background

The proposed rules published at 51 FR 2507 and 2516 on January 17, 1986, invited persons to submit written comments for the Agency to consider with regard to development of the final rule. The following comments were received for consideration in development of the final rule that amends Subpart A of Part 1924 and Subparts A and E of Part 1944 of Chapter XVIII, Title 7, Code of Federal Regulations.

Discussion of Comments Received Pertaining to Proposed Exhibit J to Subpart A of Part 1924

Issue: Definition of terms used.

Comment: Several commenters expressed concern that definitions and phrases used in Exhibit J to Subject A of Part 1924 were ambiguous.

Agency position: The Agency has considered these comments and clarified the following definitions: Accessory Building or Structure; Manufactured Home Community; Manufactured Home Rental Project, and; Permanent Perimeter Enclosure.

Issue: 100-year return frequency flood elevation.

Comment: One commenter suggested that the Agency delete the language "The National Flood Insurance Program damage projections indicate that mobile/manufactured housing is more susceptible to flood damage than site-built housing because of the materials used." Another commenter questioned the validity of the data used in the study. The final commenter suggested that it is unnecessary for the finish grade to be above 100-year flood elevation in order to protect the home.

Agency position: The Agency has considered this comment and believes that a comprehensive current study of comparative damageability of manufactured homes would reveal essentially the same findings as the earlier FEMA study. The Agency is in no position to conduct such a study. We would be glad to examine and consider amending our Final Rule if industry information or research findings conclusively demonstrate that comparative damageability of manufactured homes and site-built homes are similar.

Issue: Require house-type roofing and siding.

Comment: One commenter recommended that the Agency require a house-type exterior (roof and siding) on all structures financed.

Agency position: The Agency has considered this recommendation, but has rejected it. The Agency doe not have the authority to require or approve the use of any materials or construction for the manufactured housing unit. The Agency believes this should be addressed by local jurisdictions who may adopt specialty requirements as part of their local building or zoning codes.

Issue: Compliance with local regulations.

Comment: One commenter suggested that the wording in section IV, of Part A, Introduction, be modified by adding "except in the case of home construction in which the Federal preemption of CFR 3280 applies."

Agency position: The Agency finds merit in this comment. As a result, Part A, Section IV, Compliance with Local Regulations, has been clarified and modified to reflect only site development, installation and set-up.

Issue: Essential services.

Comment: One commenter suggested that in his State the requirement that essential services be situated nearby manufactured housing parks would likely add substantially to the land cost of the developers and threaten the economic viability of any park that attempted to maintain rents within reach of lower income families.

Agency position: The Agency has considered this comment and rejected it.

The Agency considers manufactured housing as another form of housing that is subject to the same requirements as other 515 rural rental housing developments. We have not developed special regulations for manufactured housing. We are treating manufactured housing like any other form of housing subject to the same 515 and 502 housing program requirements as conventionally built housing except those requirements mandated by law.

Issue: General site requirements.

Comment: One commenter felt that several of the siting requirements were inconsistent with typical mobile home sites, especially in the West. A few commenters suggested that the Agency change the wording of the proposed rule to permit the referencing of ANSI, A225.1 for installation requirements for manufactured homes.

Agency position: The Agency has concluded that the site requirements as presented are consistent with provisions of the Housing and Urban Rural Recovery Act of 1983, Pub. L. 98–181, which requires the manufactured home or the manufactured home and lot, meet the installation, structural and site requirements which would apply under Title II of the National Housing Act.

Issue: Access to and ventilation of basementless crawl space.

Comment: One commenter suggested that reference be made to those sections of the MPS which address access to and ventilation of basementless crawl space.

Agency position: The Agency has considered this comment, but has rejected it as unnecessary. The Agency is relying on the definition of the permanent perimeter enclosure to provide the proper ventilation and access to the crawl space beneath the manufactured home. The Agency has modified the definition to reflect this.

Issue: Insufficient bracing requirements.

Comment: One commenter suggested that the present way of bracing mobile homes will not provide protection against racking and potential damage during transportation.

Agency position: Based on a study contracted by HUD which concluded that the highway shock and vibration adversely affects long-term structural durability and shortens the useful economic life of manufactured housing, the Agency has determined that the requirement to properly cross-brace and stiffen the manufactured home during transportation is necessary to FmHA financing. The transportation period is considered to begin when the manufactured home leaves the manufacturer and to continue until the manufactured home is placed upon its permanent foundation.

Issue: Co-mingling of manufactured homes with single family detached homes.

Comment: One commenter suggested that if mobile homes were co-mingled with conventional single family homes they would depreciate the value of the conventional built homes.

Agency position: The Agency has determined that manufactured housing is one solution to housing affordability. In addition the Agency has not found data that shows manufactured housing will reduce the value of adjacent conventionally built housing. Any potential negative effects can be avoided by proper site planning and buffering between housing of widely different values.

Two studies (Foremost Insurance Company 1981 and Boeing Aerospace Company, Variables Affecting the Economic and Useful Life of Mobile Homes, 1980) found that manufactured homes (built since the mid 1970's) appreciated at a minimum of 5% annually across the country. The data did not include the value of land or attachments which would further add to increases. The factors affecting value and appreciation are the same as those for conventional housing: (1) Location, (2) upkeep, (3) original home quality, and (4) housing supply and demand forces.

Issue: 50-foot right-of-way for local streets as stated in FmHA Instruction 424.5, Exhibit B, 204.5.

Comment: Two commenters stated that the street requirements are both exclusionary and contrary to law. It was recommended that the width limit be lowered to 35 feet for the right-of-way. The 50-foot right-of-way is appropriate for a typical single-family subdivision, but *not* a reasonable mobile home siting requirement given existing local standards.

Agency position: The Agency has determined that the right-of-way requirements contained in FmHA Instruction 424.5, Exhibit B, 204.5 are sufficient for manufactured housing site development to accommodate planned street, and where appropriate, walks, planting strips, utilities and drainage on individual sites and in 515 rental developments and subdivisions. The Agency has also determined that these requirements allow for streets to be dedicated to and accepted by the public body.

When the Agency develops regulations for manufactured housing rental *parks*, consideration will be given to the adoption of ANSI A225.1, *Standards for Manufactured Home Installations (Manufactured Home-Site, Communities and Set-ups).*

Issue: Permanent foundation.

Comment: One commenter contended that the use of permanent foundations with manufactured homes presented two serious problems. The first is cost and the other drawback is the danger presented by earthquakes.

Agency position: The Agency has concluded that the permanent foundation requirements are consistent with provisions of the Housing and Urban Rural Recovery Act of 1983, Pub. L. 98–181, which requires the manufactured home or the manufactured home and lot to meet the installation, structural and site requirements which would apply under Title II of the National Housing Act. The Agency is relying on the Minimum Property Standards and the acceptable model codes for health and safety requirements, including earthquake design requirements. Therefore, the Agency finds no compelling reason for departing from the present requirements.

Issue: Distance separation between units.

Comment: In order to provide for fire safety between adjacent residential units, some commenters suggested minimum references to distance separations be included since rural town regulations for manufactured home subdivisions may be limited or non-existent.

Agency position: The Agency finds this comment persuasive. As a result, Part B, Section V has been modified to provide for distance separation and fire safety between units.

Issue: Roof drainage on entry platforms.

Comment: Another commenter recommended that FmHA consider the safety issue associated with lack of preventing water from draining onto uncovered entrance platforms. Presently Exhibit J, the FMHCSS, and other related regulations ignore the issue and would not prevent more hazardous conditions from occurring.

Agency position: The Agency has considered this comment and changed Part B, Section IV. A. 2. to require the design of accessory structures and related facilities to eliminate and prevent health and safety hazards associated with the installation of manufactured homes.

Issue: Number of reviews required of the drawings and specifications for the installation, anchorage and construction of the permanent foundation and perimeter enclosure.

Comment: Some commenters contended that the three reviews of all

site drawings and specifications for foundation systems seem excessive and time consuming, and could result in unnecessary delays, or even inhibit use of the program.

Agency position: The Agency finds these comments persuasive. As a result Part C, Section I, C has been changed to address the commenters concern.

Issue: Drawings and specification requirements.

Comment: One commenter suggested that the requirements for drawings and specifications should be no less stringent than required in FmHA Instruction 1924–A, Exhibit B.

Agency position: By law HUD is responsible for reviewing the drawings and specifications for manufactured housing units. The Agency requires design calculations and detail drawings for the site-built permanent foundation system, permanent perimeter enclosure and the connections to the unit.

The Agency has proposed changing the title of Exhibit B to 1924–A from "Guidelines for Manufactured Structures and Products" to "Requirements for Modular/Panelized Housing Units" to be consistent with the Congressional Act that renamed mobile homes to manufactured homes.

Issue: Inspection by borrower's representative.

Comment: One commenter suggested that Exhibit J, Part D, Section II should allow a borrower's representative to make inspections in lieu of the borrower only.

Agency position: The Agency has determined that § 1924.13 of this subpart provides for the borrower's representative to make inspections for more complex construction. Therefore Part D, Section II has been modified accordingly.

Issue: Inspection of development work should include the unit itself.

Comment: Several commenters stated that inspection of development work should include the unit itself and be no less stringent than FmHA Instruction 1924–A and Exhibit B.

Agency position: The Agency cannot require inspection of the unit with the site development work. The National Manufactured Housing Construction and Safety Standards (MHCSS) Act of 1974 requires the Secretary of the Department of Housing and Urban Development to conduct inspections and investigations necessary to enforce the standard; to determine that a manufactured home fails to comply with the construction standard or contains a defect or an imminent safety hazard and to direct the manufacturer to furnish notification thereof; and in some cases, to remedy the defect or imminent safety hazard. All manufactured homes will carry a certification plate indicating that the unit has been properly inspected and meets the MHCSS.

Discussion of Comments Received Pertaining to Proposed Exhibit F to Subpart A of Part 1944

Issue: Thermal Standards.

Comment: A wide majority of commenters declared the HUD thermal standards inadequate and recommended that FmHA require compliance with its current thermal standards in order to reduce the energy cost for low- and very low-income families. A few commenters were in favor of either the HUD Title VI or Title II thermal standards.

Agency position: We agree with the commenters who recommended that FmHA require compliance with its current thermal standards so we have revised paragraph VI and other related paragraphs to require manufactured homes financed by FmHA to conform with the thermal standards in Exhibit D to Subpart A or Part 1924. This revision is also based on the following:

1. Public Law 98–181 (the 1983 Housing Act) directs FmHA to adopt thermal standards for manufactured homes which are at least equal to FmHA's existing thermal standards.

2. Manufactured housing built to the FmHA thermal standards is more affordable than such housing built to a lesser standard such as HUD Title II or VI. FmHA has completed engineering analyses which show that the reduction in a family's monthly heating bill, resulting from FmHA's higher thermal standard, would be greater than the increase in the family's monthly mortgage payments to finance the higher insulation levels. This is a critical factor with regard to very low-income borrowers. Ownership of manufactured housing by very low-income families could be jeopardized if such housing is built to a thermal standard lower than FmHA's.

3. Recent studies show that currently available technology is being used in the manufactured housing industry to construct homes to meet the FmHA thermal standards. Hence, FmHA's thermal standards will not adversely impact the manufactured housing industry's construction practices.

4. The Housing Act of 1983 requires the Secretary of Energy to deliver a report to Congress on the impacts of several national energy conservation standards that apply to manufactured housing and conventional site built housing. The interim findings of this study are:

- The FmHA standards result in the lowest energy consumption of the three standards analyzed,
- Compared to typical minimum building practice, the FmHA standard reduces annual energy consumption by 36 percent to 48 percent, depending on the location.
- The FmHa standard reduces life-cycle cost in all cities analyzed, and
- When applied to manufactured housing, the existing site built FmHA thermal standard does not appear discriminatory. In fact, it produces life-cycle cost reductions more consistently in manufactured homes than in site-built homes in the cities analyzed.

Issue: Paragraph I(b) under the proposed rule required the manufactured home and site to be classified and taxed as real estate.

Comment: Two commenters expressed concern with this requirement. The commenters pointed out that some states or localities have no formal procedure for titling or taxing manufactured homes as real estate and that this requirement may make the program unusable in some areas. One commenter suggested using a similar approach as the Federal Home Loan Mortgage Corporation in determining if the property is considered real estate.

Agency position: We agree with the comments and have revised paragraph I(b) to incorporate a similar approach as the Federal Home Loan Mortgage Corporation method of determining real estate classification.

Issue: The requirement in paragraph I(b) that the loan must include both unit and site.

Comment: Some commenters considered the requirement that the loan must include both unit and site too rigid. They recommend that at a minimum loans be permitted for units placed on rented sites when the land and/or manufactured home park is cooperatively owned by the residents. Additionally, they recommended the same lease requirements which now apply in the Section 502 program be applicable to manufactured home financing.

Agency position: We chose to have the same ownership requirements for manufactured homes as stick-built homes presently financed under the Section 502 program. This was done in order to limit the administrative problems associated with the financing of a different type of housing under our housing program. Once experience is gained in the financing of manufactured homes, the Agency will consider developing a program to finance manufactured homes on rented sites.

The lease requirements are the same for stick-built and manufactured homes financed under the Section 502 program.

Issue: Mobile/manufactured home as defined in paragraph II(a) of the proposed rule.

Comment: Several comments were received regarding the definition of a mobile/manufactured home. The comments were as follows:

1. Delete the word mobile.

2. The definition of a manufactured home should be as in 24 CFR 3280 which is consistent with appropriate Federal Codes. Thermal requirements should not be included in the definition, but addressed elsewhere.

Agency position: We agree with the comment to delete the word "mobile" from the phrase "mobile/manufactured home". All "mobile/manufactured home" phrases have been changed to read "manufactured home."

We believe it is appropriate to include thermal requirements in our definition since the definition in 24 CFR implies a different thermal standard than what is required for our program.

Issue: Paragraph V(e) prohibits alteration or remodeling of the unit when the initial loan is made.

Comment: One commenter suggested an exception be made in paragraph V(e) to permit alterations for the handicapped.

Agency position: We consider the time to make alterations to the manufactured home to be before it is built. When the order is submitted to accommodate the handicapped appropriate features should be included, if needed. This method of alteration is less costly to the consumer and would not affect the warranty on the home. Also, modification to manufactured homes could result in the unit no longer meeting FMHCSS. Therefore, we did not change paragraph V(e).

Issue: Paragraph VI provides that the floor area must be 400 square feet or more, and the width 12 feet or more for a single wide and 20 feet or more for a double wide unit.

Comment: One commenter recommended that single wide units of less than 700 square feet not be financed.

Agency position: Four hundred square feet is the minimum area authorized under the HUD Title II program for insuring loans for manufactured homes on permanent foundations. We adopted the same minimum requirement for the manufactured homes financed under the Section 502 program. We believe there are families whose housing needs can be adequately met with housing that is less than 700 sq. ft. Therefore, we have not changed the 400 minimum sq. ft. requirement.

Issue: Appraisal of manufactured homes as required in Paragraph VII.

Comment: Commenters expressed two concerns with the proposed appraisal technique. The first concern was the difficulty in locating comparable manufactured home sales to use in the market approach. Another concern was that there are other cost approach appraisal systems equivalent to Marshall and Swift and these should be considered for use when appraising manufactured homes.

Agency position: We realize the difficulty in obtaining comparable sales of manufactured homes on permanent foundations. However, we have addressed this situation by authorizing the use of other than manufactured home comparables, with proper adjustments, in the absence of manufactured home comparables.

We agree there are other cost appraisal systems for manufactured homes that are similar to Marshall-Swift. Therefore, we have changed paragraph VII(b) to permit use of appraisal systems, other than Marshall-Swift, after the National Office has approved the alternate cost method.

Issue: Warranty requirements in Paragraph XIII.

Comment: Two commenters consider the requirement that a dealer-contractor warrant that a manufactured home "substantially complies with the plans and specifications and the unit sustained no hidden damage" to be unreasonable. Another commenter expressed concern that the warranty was not commensurate with inferred quality, price, length of loan, etc.

Agency position: FmHA adopted the warranty that has been required since May 12, 1983, under the HUD Title II Program for manufactured homes. We consider this warranty appropriate as our borrower will hold the dealer-contractor responsible for repair of any construction defects.

Issue: Loan limitation amount determination as required in Paragraph VIII(b).

Comment: One comment was that the dealer-contractor should not be limited to 131% of unit wholesale invoice price, but should be allowed normal competitive overhead and profit. Another comment was that the dealer-contractor should not be allowed to set the price at 131% of wholesale unit price, but should let the purchaser negotiate under a competitive market for lowest price, the same as for a stick-built home.

Agency position: We have deleted the 131% of unit wholesale invoice price determination from paragraph VIII(b). The loan limitation will be determined by the appraisal or cost, whichever is less, the same as for stick-built or modular/panelized homes. This method of determining loan amount is similar to the valuation process for manufactured homes on permanent foundations financed through the HUD Title II and Veterans Administration housing programs.

Issue: Paragraph IX requires the Dealer-Contractor to provide the erection of the manufactured home and site development.

Comment: One commenter expressed concern that few Dealer-Contractors are able to provide full erection and site development services as well as the home itself. The commenter suggested a third party be permitted to develop the sites and erect the home.

Agency position: We intend for the Dealer-Contractor to be responsible for the manufactured home unit, its erection on the foundation and all site development work to support the unit. Paragraph XI of Exhibit F authorizes a third party to do the erection and site development work, but the Dealer-Contractor would be responsible for the work. This requirement is the same for the general contractor building under our stick-built housing program. We consider the requirement that the Dealer-Contractor be responsible for all work necessary in order to simplify the development of the home site for our applicant and to facilitate the resolution of any construction complaints.

Issue: Approval of Dealer-Contractor by County Supervisor as required in Paragraph X of the proposed rule.

Comment: One commenter mentioned several potential problems with requiring the County Supervisor to approve Dealer-Contractors, such as a Dealer-Contractor that wants to be approved to develop manufactured home sites in more than one county may be approved by one County Supervisor and rejected by another. The commenter also expressed concern that there is no follow-up check on the Dealer-Contractor after approval.

Agency position: We have revised Paragraph X to require the State Director to approve a Dealer-Contractor for participation in our manufactured home program. This action will facilitate the approval process for those Dealer-Contractors that will be in operation in more than one county office area and eliminate the duplication of approvals by different County Supervisors. We have not provided a follow-up check on the Dealer-Contractor, but paragraph X(a)(8) does require a complaint file to be maintained on each Dealer-

Contractor. This will provide a system of monitoring the Dealer-Contractors performance.

Issue: Approval procedure for thermal design and construction as required in paragraph XIV.

Comment: One commenter questioned what effect the approval procedure for the thermal design and construction of a manufactured home would have on implementing the financing of manufactured homes in a timely manner.

Agency position: We have revised paragraph XIV(c) to streamline the thermal design and construction approval procedure. If the design of a manufactured home conforms with FmHA's prescriptive thermal requirements of paragraph IV A of Exhibit D to Subpart A of Part 1924, FmHA approval of the thermal design is not necessary. However, the manufacturer would be required to certify that the design conforms to FmHA's thermal standards. If the manufacturer proposes to use one of FmHA's optional thermal calculation methods in paragraph IV C of Exhibit D to Subpart A of Part 1924, then the thermal design must be reviewed by the FmHA State Office. The manufacturer would still be required to certify that the construction of the unit conforms to the design and FmHA's thermal standards.

Issue: The requirement in paragraph XV of the proposed rule that the term of the loan be 20 years.

Comment: The majority of the commenters recommended a term of 30 years in order to provide housing that is affordable for low- and very low-income families, and to standardize the loan term for similar housing between Federal Agencies. However, some commenters advocated a term of 20 years or less as they consider the manufactured home construction standards inadequate to produce a unit that would have a useful life of 20 years or more.

Agency position: In order to provide affordable manufactured housing, as intended by Pub. L. 98–181, we have adopted a loan term of 30 years.

Issue: Paragraph XVIII in the proposed rule required the applicant to provide the manufacturer's invoice.

Comment: Some commenters expressed concern that the applicant would not normally have a copy of the manufacturer's invoice to provide the lender. The commenters suggested the manufactured home retailer, rather than the loan applicant, provide the wholesale invoice to the Agency.

Aency position: We have revised our method of determining the maximum loan amount. The revised method does not require use of the manufacturer's invoice. Therefore, we have deleted the requirement that it be furnished by the applicant.

Issue: Environmental impact statement.

Comment: One commenter disagreed with the determination that the proposed regulation will not significantly affect the quality of the human environment and the conclusion that an environmental impact statement is not required. The commenter believes the availability of FmHA manufactured home loans will accelerate the conversion of land from agricultural use in many rural areas.

Agency position: In the development of the proposed rule, FmHA prepared an environmental impact assessment and determined there would be no significant impact to the quality of the human environment from the Rule's implementation. An important reason for this determination is that all of the Agency's environmental policies and requirements that apply to stick-built homes will apply to manufactured homes. These requirements include avoiding sites in sensitive environmental areas such as floodplains, wetlands, and important farmlands. It also requires that homes be located within developed areas or contiguous to developed areas.

Issue: Purpose of loan funds.

Comment: We received a comment that free-standing appliances should not be financed and several comments that credit should be given for wheels and axles.

Agency position: The financing of appliances will have the same requirements as under our Section 502 Program for stick-built homes. Therefore, the proposed rule was not changed. We do agree that consideration should be given to the value of wheels and axles, since they are required to be removed. We have revised Paragraph XVIII(b) to include a credit for wheels and axles on the cost estimate for the purchase of the manufactured home.

Issue: Changes needed in FmHA procedures to implement the financing of manufactured homes.

Comment: Commenters recommended the following procedural changes:

A. Subpart A of Part 1944 of this chapter:

1. Revise 1944.16(a), which provides limits of 1200 square feet and 1½ baths, to include manufactured homes.

2. Revise § 1944.16(b) to preclude financing of existing manufactured homes.

3. Revise § 1944.16(c) to disallow repair loans on manufactured homes.

4. Rewrite the introductory paragraph in § 1944.40 as present form is not clear.

5. Revise Section 1944.34(f)(2) to permit a subsequent loan of less than 25-year term.

B. Parts 1955 and 1965 need to be revised to include manufactured homes.

Agency position: We revised §§ 1944.16 (b), (c) and § 1944.40 of subpart A of Part 1944 as suggested by the commenters. Section 1944.16(a) was not revised. Exhibit F of Subpart A of Part 1944 requires the conditions in paragraph VI of § 1944.16(a) to be met when financing manufactured homes. A revision of § 1944.34(f)(2) is not necessary as the term will be 30 years. Parts 1955 and 1965 were not revised as servicing for manufactured home loans will be the same as for stick-built or modular/panelized.

Issue: Format of Exhibit A.

Comment: One commenter considered the format of using questions as paragraph headings to be improper form and not consistent with other Agency Instructions.

Agency position: Agency personnel have responded favorably to the question-and-answer format used in the Exhibit. Therefore, this format has been retained.

Issue: Opposition to the financing of manufactured homes by FmHA.

Comment: Several commenters expressed opposition to the financing of manufactured homes by FmHA.

Agency position: We are complying with the Housing and Urban Rural Recovery Act of 1983, Pub. L. 98–181 by financing manufactured homes.

Issue: Vendors insurance.

Comment: One commenter recommended borrowers be required to obtain vendor's insurance that would insure the Agency against a borrower's unauthorized moving of FmHA security.

Agency position: The probability of a manufactured home being moved once set on a permanent foundation is remote. Therefore, we are not requiring vendor's insurance.

Issue: Reducing the risk of manufactured home loans.

Comment: One commenter suggested requiring applicants for manufactured home loans to have a minimum equity in order to minimize the risk taken by the Government.

Agency position: The risk in manufactured home loans will be minimized in the same manner as for stick-built or modular/panelized home loans; that is, by making sound loans and proper valuation of the security for the loan.

Discussion of Comments Received Pertaining to Proposed Revisions to Subpart E of Part 1944.

Issue: Section 1944.205(cc) Manufactured home (unit).

Comment: One commenter is concerned that our definition of manufactured home deviates from HUD's definition. In particular, he is concerned that we included the thermal requirements in our definition.

Agency position: We believe it is appropriate to include thermal requirements in our definition since the definition in 24 CFR 3280 implies a different thermal standard than what is authorized for our program.

Issue: Section 1944.223(b) Loan limitations.

Comment: One commenter feels that limiting the loan amount to a fixed percent of manufacturer's invoice is probably not practical.

Agency position: We have deleted the fixed percent of manufacturer's invoice as the loan limit. The maximum loan amount will be based on the development cost or the security value of each project, whichever is less. This is consistent with the Section 515 program.

Issue: Section 1944.223 Supplemental requirements for manufactured home rental project development.

Comment: One commenter asked if we could also develop manufactured home parks, leaving space for privately owned homes.

Agency position: At this time the Agency is financing only the projects (including the homes) for rental purposes. Financing parks with space for privately owned homes would require more extensive modification to existing rural rental housing regulations and to single family housing regulations which would delay implementation. After this regulation for financing projects is in place, we will be examining the idea of developing a regulation to finance manufactured home parks in conjunction with single family housing and developing a regulation to finance manufactured home classified as chattel property.

Issue: Opposition to program.

Comment: Two commenters generally opposed the program.

Agency position: We are implementing Pub. L. 98–181 by financing manufactured home rental projects.

Issue: Section 1944.223(a) Eligible projects.

Comment: One commenter is concerned that only two units on one tract of land could be considered a project. He feels that this type of housing scattered throughout a community could become an eyesore.

Agency position: The 515 rural rental program allows two-unit stick-built projects. We see no reason to deviate from this standard when incorporating manufactured home projects into our procedures. In addition, manufactured home projects must meet local zoning requirements and the Agency's position is that the local community must regulate where they want manufactured home projects.

Issue: Section 1944.232(f) Submission of docket to National Office.

Comment: One commenter suggested that submission to the National Office should be eliminated after each state has been approved.

Agency position: All requests for manufactured home rental projects will be submitted to the National Office at this time. This is a new program and we feel that it is necessary to monitor closely. We want to be involved so we can analyze the program and make adjustments, where needed, to ensure a successful program. After the program is established and running smoothly we will revert back to our normal processing for the 515 program.

Issue: Section 1944.223(a) Eligible projects.

Comment: One commenter questioned our inconsistency in using the terms "site" and "parcel of land."

Agency position: We have changed the language in § 1944.223(a)(2) to be consistent with other references to "site."

Issue: Section 1944.223(e) Property requirements.

Comment: One commenter believes that 400- to 600-square-foot manufactured units would be difficult to rent and, therefore, a larger standard should be applied.

Agency position: The 400-square-foot minimum is consistent with HUD Title II standards and we adopted the same minimum requirement. Before financing a manufactured housing project, we require the developer to provide market information and if the market does show a need for units that size, we will provide financing.

Issue: 1924–A, Exhibit J, Part B, section I.E.

Comment: One commenter is concerned that FmHA is prohibiting manufactured home sites or rental projects from being developed in deteriorated residential areas. They feel that many communities restrict such development to areas that could be interpreted as deteriorated and therefore FmHA would be denying assistance to these communities.

Agency position: The Agency is going to keep its location requirements consistent throughout the programs. We see no reason to develop manufactured home sites or rental projects in areas where we would not develop stick-built housing.

Issue: Terms used.

Comment: One commenter suggested that we adopt the term manufactured home rather than mobile/manufactured home in our regulation. The commenter pointed out that the 1980 Housing Act changed the name of mobile homes to manufactured homes in all federal laws and literature and that the administrative agencies have been conforming.

Agency position: We agree to adopt the term manufactured homes.

Issue: Section 1944.223(d) Security.

Comment: One commenter was concerned that the manufactured home be titled and taxed as real estate. He felt this requirement might make the program unusable in some states or localities which have no formal system for titling and taxing manufactured homes as real estate.

Agency position: We understand this concern and have changed our language for Final Rule.

Issue: Program funding.

Comment: One commenter is concerned that funds for manufactured housing projects come from the general Section 515 funds. They feel the program should be separate and funded accordingly.

Agency position: Through the Section 515 rural rental housing program we fund several types of housing—senior citizen, family, rural cooperative, and now manufactured housing. All proposals must compete for the same funds. Due to the size of our allocation, we do not think it would be practical to try to separate funds for all the types of housing we finance. The amounts we would end up working with in each type of housing would be too small to be practical.

Issue: Section 1944.223(b) Loan limitations.

Comment: One commenter feels that due to the uncertain economic life span of manufactured homes our loans should be limited to 90 percent of development cost or 95 percent of appraised value.

Agency position: The agency is going to keep the amount of loan consistent throughout the 515 program. If we were going to adjust for the economic life span of manufactured housing, we would consider adjusting the term of the loan, not the amount of the loan.

Issue: 1924–A, Exhibit J, Part A, II.

Comment: One commenter asks if the units in a manufactured home rental project are to be attached or detached. They are concerned that detached units will contradict policy for the stick-built rural rental projects.

Agency position: We do not believe there is a contradiction with the policy for the stick-built rural rental projects. If an applicant wants to submit a proposal for attached manufactured homes, we will consider it. The units that we are financing must be built to the Federal Manufactured Home Construction and Safety Standards which is a code for single-family units. Any proposal for attaching these units will be scrutinized closely to see that they meet fire and safety requirements.

For the reasons set forth in the Final Rule related to Notice 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," the Section 502 rural housing loan program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

However, under regulations pertaining to the financing of manufactured homes under Subpart E of Part 1944, "Rural Rental Housing Loan Policies, Procedures and Authorizations," the program and activities will be subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

The collection of information requirements in this regulation have been submitted to the Office of Management and Budget for approval.

Catalog of Federal Domestic Assistance Title and Number: 10.410 Low Income Housing Loans. 10.415 Rural Rental Housing Loans.

List of Subjects

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Home improvement, Loan programs—housing and community development, Low and moderate income housing—rental, Mobile homes, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing subsidies.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

2. Section 1924.5 is amended by adding paragraph (e)(4) to read as follows:

§ 1924.5 Planning development work.

* * * * *

(e) * * *

(4) The site planning design, development installation and set-up of manufactured home sites, rental projects and subdivisions shall be guided by Exhibit J of this subpart.

§ 1924.8 [Amended]

3. In § 1924.8, paragraph (a) is amended by removing the period after the phrase "manufactured off-site" and adding the following: "except those defined in Exhibit J of this Subpart."

Exhibit B—[Amended]

4. The introductory paragraph of Exhibit B of Subpart A is amended by inserting after the first sentence the following: "This Exhibit does not apply to manufactured homes defined in Exhibit J of this subpart."

5. Exhibit J is added to Subpart A of Part 1924 to read as follows:

Exhibit J—Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation and Set-Up

Part A—Introduction
Part B—Construction and Land Development
Part C—Drawings, Specifications, Contract Documents and Other Documentation
Part D—Inspection of Development Work

Part A—Introduction

I. *Purpose and Scope.* This Exhibit describes and identifies acceptable site development, installation and set-up practices and concepts for manufactured homes. It is intended for FmHA field personnel, builders, developers, sponsors, and others participating in FmHA housing programs.

This Exhibit applies to all manufactured homes (except those referenced in Exhibit B of this subpart) on scattered sites or in rental projects and subdivisions and covers the requirements for design and construction of manufactured home communities. FmHA may approve alternatives or substitutes if it finds the proposed design satisfactory for the proposed use, and if the materials, installation, device, arrangement, or method of work is at least equivalent to that prescribed in this Exhibit considering quality, strength, effectiveness, durability, safety and protection of life and health.

FmHA will require satisfactory evidence to be submitted to substantiate claims made regarding the use of any proposed alternative.

II. *Background.* FmHA has authority to make (1) Section 502 Rural Housing (RH) loans with respect to manufactured homes and lots, and (2) section 515 Rural Rental Housing (RRH) loans with respect to manufactured home rental projects.

The manufactured home must be constructed in conformance with the Federal Manufactured Home Construction and Safety Standard (FMHCSS) and be permanently attached to a site-built permanent foundation which meets or exceeds the Minimum Property Standards (MPS) for One- and Two-Family Dwellings or Model Building Codes acceptable to FmHA. The manufactured home must be permanently attached to that foundation by anchoring devices adequate to resist all loads identified in the MPS. This includes resistance to ground movements, seismic shaking, potential shearing, overturning and uplift loads caused by wind. Note that anchoring straps or cables affixed to ground anchors other than footings will *not* meet these requirements.

Subpart G of Part 1940 of this chapter applies on scattered sites, in subdivisions and rental projects to the development, installation and set-up of *manufactured homes.* To determine the level of environmental analysis required for a particular application, each manufactured home or lot involved shall be considered as equivalent to one housing unit or lot as these terms are used in §§ 1940.310–1940.312 as well as in any other sections of Subpart G of Part 1940 of this chapter. The implementation of FmHA environmental policies and the consideration of important land use impacts are of particular relevance in the review of proposed manufactured home sites and in achieving the two purposes highlighted below. Because the development, installation and set-up of manufactured home communities, including scattered sites, rental projects, and subdivisions, differ in some requirements from conventional site and subdivision development, two of the purposes of this Exhibit are to:

A. Encourage economical and orderly development of such communities and nearby areas, and

B. Promote the safety and health of residents of such communities.

Therefore, this Exhibit identifies those required standards and regulations and suggested guidelines for eliminating and preventing health and safety hazards and promoting the economical and orderly development and utilization of land for planning and development of manufactured home communities. The Exhibit also provides the requirements for meeting the following:

A. *Resistance to Wind.* Foundations and anchorages shall be designed to resist wind forces specified in American National Standards Institute (ANSI) A–58.1–1982 for the geographic area in which the manufactured home will be sited;

B. *Proper Installation.* The manufacturer's installation instructions provided with each manufactured home shall contain instructions for at least one site-built foundation with interior and/or perimeter supports. FmHA field office personnel shall review to determine its adequacy as security for an FmHA loan only, the foundation design concept for compliance with this Exhibit, the FmHA/MPS and any Model Building Code acceptable to FmHA in that particular geographic area; and

C. *Proper Foundation Design.* Manufactured homes shall be installed on a foundation system which is designed and constructed to sustain, within allowable stress and settlement limitations, all applicable loads. Any foundation and anchorage system or method of construction to be used should be analyzed in accordance with well-established principles of mechanics and structural engineering.

III. *Definitions.* For the purpose of this Exhibit the following definitions apply:

Accessory Building or Structure.

A subordinate building or structure which is an addition to or supplements the facilities provided by a manufactured home.

Anchoring Systems. An approved system for securing the manufactured home to the ground or foundation system that will, when properly designed and installed, resist overturning and lateral movement of the home from wind forces.

Contiguous. Sharing a boundary, adjoining or adjacent. A lot or subdivision is considered to be contiguous to other lots or subdivisions if it is adjoining, touching or adjacent.

Federal manufactured Home Construction and Safety Standards (FMHCSS). A 1976 federal standard, commonly known as the HUD Standard, for the construction, design and performance of a manufactured home which meets the needs of the public including the need for quality, durability and safety. Units conforming to the FMHCSS are certified by an affixed label that reads as follows:

AS EVIDENCED BY THIS LABEL NO. _____ THE MANUFACTURER CERTIFIES TO THE BEST OF THE MANUFACTURER'S KNOWLEDGE AND BELIEF THAT THIS MANUFACTURED HOME HAS BEEN INSPECTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND IS CONSTRUCTED IN CONFORMANCE WITH THE FEDERAL MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE. SEE DATA PLATE.

Manufactured Home. A structure which is built to the Federal Manufactured Home Construction and Safety Standards and FmHA's thermal requirements. It is transportable in one or more sections, which in the traveling mode is ten body feet or more in width, and when erected on site is four hundred or more square feet, and which is built on a permanent foundation when connected to the required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure.

Manufactured Home Community. A parcel or contiguous parcels of land which contains two or more manufactured home sites available to the general public for occupancy. Sites and units may be for rent, or sites may be sold for residential occupancy (as in a subdivision).

Manufactured Home Rental Project. A parcel or multiple parcels of land which have been so designated and improved to contain manufactured homes with sites available for rent.

Manufactured Home Site. A designated parcel of land in a manufactured home rental project, subdivision or scattered site designed for the accommodation of a unit and its accessory structures for the exclusive use of the occupants.

Manufactured Home Subdivisions. A contiguous group of 10 or more (developed or undeveloped) lots or building sites designed or intended to be conveyed by deed to individual owners for residential occupancy primarily by manufactured homes. Typically all roads, rights-of-ways, water, sewer and other utility line easements would be dedicated to a public body which would be responsible for maintenance.

Permanent Perimeter Enclosure. A permanent perimeter structural system completely enclosing the space between the floor joist of the manufactured home and the ground. If separate from the foundation system, the permanent perimeter enclosure shall be secured to the perimeter of the manufactured home, properly ventilated and accessible and constructed of materials that conform to the FmHA adopted MPS requirements for foundations.

Pier Support System. Consists of footings, piers, caps, leveling spacers, or approved prefabricated load bearing devices.

Related Facilities. Any nonresidential structure or building used for rental housing related purposes as defined in § 1944.205(i) of Subpart E of Part 1944 of this chapter.

Site-Built Permanent Foundation System. A foundation system (consisting of a combination of footings, piers, caps and shims and anchoring devices or required structural connections) which is designed and constructed to support the unit and sustain, within allowable stress and settlement limitations, all applicable loads specified in ANSI A58.1–1982. All loads shall be transferred from the manufactured home to the earth at a depth below the established frost line without exceeding the safe bearing capacity of the supporting soil.

Set-Up. The work performed and operations involved in the placement of a manufactured home on a foundation system, to include installation of accessories or appurtenances and anchoring devices, and when local regulations permit, connection of utilities, but excluding preparation of the site.

IV. *Compliance with Local Regulations.* These requirements do not replace site development standards established by local law, ordinances, or regulations. Whenever such local standards contain more stringent provisions than any of the site development, installation and set-up minimums of FmHA, the more stringent standards shall govern.

V. *Applicable Standards, Regulations and Manuals.*— A. Manufactured housing to be financed by FmHA must comply with the following standards:

1. Federal Manufactured Home Construction and Safety Standards, 24 CFR Part 3280, mandated by Congress under Title VI of the Federal Housing and Community Development Act of 1974, except for § 3280.506, "Heat Loss," of Subpart F, "Thermal Protection," to Part 3280.

2. Foundation requirements of the Minimum Property Standards as adopted by FmHA or a Model Building Code acceptable to FmHA.

3. [Reserved]

4. Uniform Federal Accessibility Standard (UFAS).

5. ANSI A58.1–1982, Minimum Design Loads for Buildings and Other Structures.

B. Manufactured housing to be financed by FmHA shall comply with all applicable FmHA regulations, including but not limited to the following:

1. Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5), "Planning and Performing Site Development Work."

2. Subpart A of Part 1924, Exhibit D, "Thermal Performance Construction Standards."

3. Subpart G of Part 1940, "Environmental Program."

4. Subpart A of Part 1944, "Section 502 Rural Housing Loan Policies, Procedures, and Authorizations."

5. Subpart E of Part 1944, "Rural Rental Housing Loan Policies, Procedures, and Authorizations."

The requirements of the above references have not been repeated in this Exhibit. Those requirements contained above are either mandatory or minimums and every effort should be made by the applicant, builder-developer or dealer-contractor to utilize higher standards, when appropriate.

Part B—Construction and Land Development

I. *General Acceptability Criteria.* The following criteria apply to development on scattered sites, in subdivisions and in rental project communities.

A. A manufactured home development including a site, rental project or subdivision shall be located on property designated for that use, where designations exist, by the local jurisdiction.

B. Conditions of soil, ground water level, drainage, flooding and topography shall not create hazards to the property and health or safety of the residents.

C. The finished grade elevation beneath the manufactured home or the first flood elevation of the habitable space, whichever is lower, shall be above the 100-year return frequency flood elevation. This requirement applies wherever manufactured homes may be installed, not just in locations designated by the National Flood Insurance Program as areas of special flood hazards. The use of fill to accomplish this is a last resort. However, as stated in § 1940.304 of Subpart G of Part 1940 of this chapter, it is FmHA's policy not to approve or fund any proposal in a 100-year floodplain area unless there is no practicable alternative to such a floodplain location.

D. Essential service such as employment centers, shopping, schools, recreation areas, police and fire protection, and garbage and trash removal shall be convenient to the development and any site, community, or subdivision must meet the environmental and location requirements contained in Subpart G of Part 1940 of this chapter.

E. Manufactured home sites, rental projects and subdivisions shall not be subject to any adverse influences of adjacent land uses. An adverse influence is considered as one that is out of the acceptable level or range of a recognizable standard or where no standard exists is considered a nuisance irrespective of a site being zoned for manufactured home use. Health, safety and aesthetic consequences of location shall be carefully assessed by inspection of the site prior to selection of development. Undesirable land uses sush as deteriorated residential or commercial areas and noxious industrial properties shall be avoided to ensure compatibility. Other undesirable elements such as heavily traveled highways, airport runways, railroad, or fire hazards and other areas subject to recognizably intolerable noise levels shall be avoided.

F. The requirements for streets shall be those found in § 1804.67 of Subpart D to Part 1804 of this chapter (paragraph VII of FmHA Instruction 424.5).

G. The site design and development shall be in accordance with sound engineering and architectural practices and shall provide for all utilities in a manner which allows adequate, economic, safe, energy efficient and dependable systems with sufficient easements for their required installation and maintenance.

H. Utilities for each manufactured home site, rental housing project or subdivision shall be designed and installed in accordance with §§ 1804.66 and 1804.70 of Subpart D of Part 1804 (paragraph VI and X of FmHA Instruction 424.5); and the State health authority having jurisdiction, and all local laws and regulations requiring approval prior to construction.

I. Exhibit C, Section V of this Subpart shall be complied with by the applicant, dealer-contractor or builder-developer for manufactured home projects with individual water supply and sewage disposal systems. This Exhibit shall be used by the FmHA County Supervisors, District Directors, and State Directors in reviewing submissions.

J. During the planning, design, and construction of the foundation system and/or perimeter enclosure, provisions shall be made for the installation and connection of on-site water, gas, electrical and sewer systems, which are necessary for the normal operation of the manufactured home. Water and sewer system hookups shall be adequately protected from freezing.

II. *Development on Scattered Sites and in Subdivisions.*—A. *General.* Scattered sites and subdivision developments will be planned and constructed in accordance with specific requirements of this subpart, Subpart D of Part 1804 (FmHA Instruction 424.5), and Subpart G of Part 1940 of this chapter, and the applicable FmHA/MPS or Model Building Codes acceptable to FmHA. Manufactured homes for development in a manufactured home community shall:

1. Be erected with or without a basement on a site-built permanent foundation that meets or exceeds applicable requirements of the FmHA/MPS for One- and Two-Family Dwellings or Model Building Codes acceptable to FmHA;

2. Be permanently attached to that foundation by anchoring devices adequate to resist all loads identified in the FmHA adopted MPS (this includes resistance to ground movements, seismic shaking, potential shearing, overturning and uplift loads caused by wind, etc.);

3. Have had the towing hitch or running gear, which includes tongues, axles, brakes, wheels, lights and other parts of the chassis that operate only during transportation removed;

4. Have any crawl space beneath the manufactured home properly ventilated and enclosed by a continuous permanent perimeter enclosure. If it is not the supporting foundation, designed to resist all forces to which it may be subject without transmitting to the building superstructure movements or any effects caused by frost heave, soil settlement (consolidation), or shrinking or swelling of expansive soils; and be constructed of materials that conform to FmHA adopted MPS requirements for foundations;

5. Have the manufactured home insulated to meet the energy conserving requirements contained in Exhibit D of this subpart;

6. Have a manufactured home site, site improvements, and all other features of the mortgaged property not addressed by the Federal Manufactured Home Construction and Safety Standards, meet or exceed applicable requirements of this Subpart and Part 1804, Subpart D of this chapter (FmHA Instruction 424.5), the FmHA adopted MPS except paragraph 311–2.2 or a Model Building Code acceptable to FmHA;

7. Have had the manufactured unit itself braced and stiffened where necessary before it leaves the factory to eliminate racking and potential damage during transportation; and

8. Be eligible for financing in accordance with the requirements of either Section 502, or Section 515 of FmHA's Housing Program, for which purpose the beginning of construction will be the commencement of on-site work even though the manufactured home itself may have been produced and temporarily stored prior to the date of application for financing.

B. *Site Planning and Development.* The site planning and development of manufactured home scattered sites and subdivisions shall also comply with the following:

1. *Arrangement of Structures and Facilities.* The site, including the manufactured home, accessory structures, and all site improvements shall be harmoniously and efficiently organized in relation to topography, the shape of the plot, and the shape, size and position of the unit. Particular attention shall be paid to use, appearance and livability.

2. *Adaptation to Site Assets.* The manufactured home shall be fitted to the terrain with a minimum disturbance of the land. Existing trees, rock formations, and other natural site features shall be preserved to the extent practical. Favorable views or outlooks shall be emphasized by the plan.

3. *Site Plan.* The site plan shall provide for a desirable residential environment which is an asset to the community in which it is located.

4. *Lot Size.* The size of manufactured home lots (scattered sites and subdivisions) shall be determined by § 1944.11(c) of Subpart A of Part 1944 and § 1804.69 of Subpart D of Part 1804 of this chapter (paragraph IX of FmHA Instruction 424.5).

C. *Foundation Systems, Anchoring and Set-up.*

1. The foundation system shall be constructed in accordance with this subpart and one of the following: (a) the foundation system included in the manufacturer's installation instructions meeting FmHA/MPS requirements, (b) the FmHA/MPS 4900.1, which specifies performance requirements for foundations in Section 600 "General" and paragraph 601–16 "Foundations," or (c) an FmHA recognized model building code.

2. The manufactured home permanent foundation system shall constitute a permanent load bearing support system for the manufactured home. The manufacturer or applicant shall be permitted to design or specify the installation of a foundation system which meets FmHA/MPS design requirements for foundations and the general requirements above.

3. The applicant's responsibility for proper design and installation of the permanent foundation system, anchoring and set-up shall be in accordance with § 1924.5(f)(1), of this subpart.

4. The builder/developer of the manufactured home property, for proposed construction, shall submit with the application for financing by the applicant or for a conditional commitment design calculations, details and drawings for the installation, anchorage and construction of permanent foundation and perimeter enclosure to be used.

III. *Rental Housing Project Development.*—A. *General.* Manufactured housing rental developments shall be planned and constructed in accordance with requirements of Subpart D of Part 1804 (FmHA Instruction 424.5); this subpart; Subpart G of Part 1940;

the FmHA/MPS; and the requirements of Subpart E of Part 1944 of this chapter.

B. *Site Planning and Development.* Site planning and development shall adapt to individual site conditions and the type of market to be served, reflect advances in site planning and development techniques, and be adaptable to the trends in design of the manufactured home. Site planning and development shall utilize existing terrain, trees, shrubs and rocks formations to the extent practicable. A regimental style site plan design should be avoided.

C. *Foundation Systems, Anchoring and Set-up.* Foundation systems, anchoring and set/ups for manufactured home rental projects (site and home) developed under FmHA Section 515 Rural Rental Housing program shall comply with the requirements of paragraphs II A and II C above.

IV. *Accessory Structures and Related Facilities.*—A. *General.* Accessory structures and related facilities are dependent upon the manufactured home and its environment.

1. Accessory structures and related facilities shall be planned, designed and constructed in accordance with the applicable provisions of this subpart; the FmHA/MPS; and local criteria of the authority having jurisdiction.

2. Accessory structures and related facilities shall be designed in a manner that will eliminate and prevent health and safety hazards and enhance the appearance of the manufactured home and its environment.

3. Accessory structures and related facilities shall not obstruct required openings for light and ventilation of the manufactured home and shall not hamper installation and utility connections of the unit.

B. *Accessory Structures.* 1. Accessory structures shall not include spaces for pantries, bath, toilet, laundries, closets or utility rooms.

2. Accessory structures shall be carefully designed and constructed for the convenience and comfort of the manufactured home occupant. These features significantly affect the visual appearance of the community and influence livability.

C. *Related Facilities (Rental Housing Projects).* 1. This includes those facilities as defined in §§ 1944.205(i) and 1944.212(f) of Subpart E of Part 1944 of this chapter.

2. Related facilities built on-site must meet the FmHA/MPS and Subpart A of Part 1924 of this chapter or other building codes approved by FmHA.

3. Workmanship shall be of a quality equal to good standard practice. Material shall be of such kind and quality as to assure reasonable durability and economy of maintenance, all commensurate with the class of building under consideration.

4. All members and parts of the construction shall be properly designed to carry all loads imposed without detrimental effect on finish or covering materials.

5. The structure shall be adequately braced against lateral stresses and each member shall be correctly fitted and connected.

6. Adequate precautions shall be taken to protect against fire and accidents.

7. All related facilities which require accessibility to the handicapped must comply with the Uniform Federal Accessibility Standard (UFAS).

V. *Fire Protection and Safety.* A. The design of the site plan for each manufactured community and scattered site shall meet the fire protection and safety requirements of the local authority responsible for providing the necessary fire protection services.

B. All fire detection and alarm systems, and water supply requirements for fire protection for manufactured communities shall be in accordance with the local authority responsible for providing the necessary fire protection services.

C. Any portion of a manufactured home shall not be closer than the local separation requirements of the development standard for side to side, end to end, and end to side siting. If the exposed composite wall and roof of two or more manufactured homes are proposed to be joined they shall be without openings and constructed of materials which will provide a minmum one-hour fire rating each, or the manufactured homes are separated by a one-hour fire rated barrier designed and approved for such installation and permitted by the authority having jurisdiction.

D. Manufactured homes shall not be positioned vertically (stacked) with one over the other in whole or in part without the specific approval of the authority having jurisdiction.

Part C—Drawings, Specifications, Contract Documents and Other Documentation

1. *General.* Adequate site development and foundation installation drawings and specfications shall be provided by the applicant or dealer-contractor to FmHA to fully describe the construction and other development work. These documents shall be provided according to the requirements of § 1924.5(f)(1) of this subpart. Contract documents will be prepared in accordance with § 1924.6 and, in the case of multiple family housing construction and development, § 1924.13 of this subpart.

A. The documents recommended shall be used as a guide for drawings and specifications to be submitted in support of all types of loan and/or grant applications involving manufactured homes. Adequate and accurate drawings and specifications are necessary to:

1. Determine the acceptability of the physical environment and improvements,

2. Determine compliance with the applicable standards and codes,

3. Review cost estimates, and

4. Provide a basis for financing, inspections, and the warranty.

B. Detailed floor plans, drawings and specifications are not required for any manufactured home to be installed on a scattered site, in a subdivision or rental housing project. However, a schematic floor plan should be submitted by the applicant when applying for FmHA financing. The unit must have an affixed label as specified in paragraph XIV (c)(3) of Exhibit F of Subpart A of Part 1944 indicating that the unit is constructed to the FmHA thermal requirements for the appropriate winter degree days. This will indicate that the manufacturer certifies that the unit has been properly inspected and it meets the FmHA Thermal Performance Construction Standard.

C. For proposed construction, the builder or dealer-contractor shall submit with the loan or grant application design calculations, details and drawings for the installation, anchorage and construction of the permanent foundations and perimeter enclosure to be used. Drawings and specifications for foundation systems will be reviewed and examined by either the FmHA County Supervisor, District Director, or State Architect/Engineer for foundation support locations, loads and connection requirements specified by the manufacturer as a basis for evaluating foundation compliance with the FmHA/MPS or Model Building Code, and for determining design suitability for soil conditions. Drawings and specifications will also be examined by FmHA to determine compliance with all other on-site features not covered by the FMHCSS.

D. Foundation design sections and details of all critical construction points systems, anchorage methods, and structural items shall be scaled as necessary to provide all appropriate information 1:30 (3/8"=1'-0") minimum.

II. *Scattered Sites.* Drawings for single family manufactured housing shall be submitted by the applicant in addition to the requirements of paragraph I above and the requirements of paragraphs II A and D–7 of Exhibit C of this subpart.

III. *Subdivisions.* A. § 1804.74 of Subpart D of 1804 (Exhibit A of FmHA Instruction 424.5) will be used as a guide by the applicant or builder-developer in preparing a proposal, and in providing supporting documents for a site development with 10 or more sites.

B. § 1804.74 of Subpart D of Part 1804 (Exhibit A of FmHA Instruction 424.5) will be used by FmHA County Supervisors, District Directors, and State Directors in reviewing subdivision submissions.

IV. *Rental Housing Projects.* A. Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5) will be used as a guide by the applicant or dealer-contractor in preparing a proposal and supporting documents for manufactured housing rental projects.

B. Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5) shall be used by FmHA County Supervisors, District Directors, and State Directors in reviewing manufactured housing rental project submissions.

V. *Specifications.* A. Form FmHA 424–2, "Description of Materials," or other acceptable and comparable descriptions of all materials used for site development, foundation installation and the permanent perimeter enclosure shall be submitted with the drawings by the applicant.

B. The material identification information shall be in sufficient detail to fully describe the material, size and grade. Where necessary, additional sheets shall be attached as well as manufacturer's specification sheets for equipment and/or special materials.

Part D—Inspection of Development Work

I. *General.* The following policies will govern the inspection of all manufactured housing development work. This includes

scattered sites, subdivisions, rental housing projects and all accessory structures and related facilities unless otherwise indicated.

II. *Inspections.* A. The responsibility for frequency and propose of inspections shall be in accordance with § 1924.9(b) (1), (2) and (3) of this subpart. The inspection requirements of § 1924.13 apply to the planning and conduct of construction work on all 515 housing developments that are more extensive in scope and more complex in nature than those involving an individual manufactured housing unit. The Stage 2 inspection customary for site-built housing when the building is enclosed is not required for manufactured homes.

The Stage 2 inspection for manufactured homes will be made within two working days after erection or placement on the foundation to determine compliance with accepted installation drawings and specifications for installation and set-up and to verify that the correct unit is on the site.

Stages 2 and 3 inspections for manufactured homes may be combined when authorized by the State Director.

B. The borrower will join the County Supervisor or the District Director in making periodic inspections as often as possible and always for the final inspection.

C. The borrower should be encouraged to make enough periodic visits to the site to be familiar with the progress and performance of the work in order to protect the borrower's interest. If the borrower observes or otherwise becomes aware of any fault or defect in the work or nonconformance with the contract documents, the borrower should give prompt written notice thereof to the dealer-contractor and a copy of the notice to the appropriate County Supervisor or District Director.

D. During inspection, it will generally be infeasible to determine whether a manufactured unit erected on a site was properly braced and stiffened during transportation. Inspectors should examine these units to determine that there is no obvious damage or loosening of fastenings that may have occurred during transportation. The dealer-contractor must warrant these units against such damage, which should protect FmHA's interest.

III. *Warranty Plan Coverage.* The warranty requirements for all development work shall be in accordance with § 1924.9(d) of this subpart and Exhibit F of Subpart A of Part 1944 of this chapter.

PART 1944—HOUSING

6. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1944.3 [Amended]

7. In § 1944.3 paragraph (a)(3) is amended by replacing the period at the end of the sentence with a comma and adding the following: "except for manufactured homes."

8. In § 1944.3 paragraph (b)(9) is amended by replacing the period at the end of the sentence with a comma and adding the following: "and incidental expenses authorized in Exhibit F of this subpart."

§ 1944.16 [Amended]

9. In § 1944.16 paragraph (b) is amended by adding at the end of the paragraph the following: "Loans will not be made on an existing manufactured home unless it is already financed with a Section 502 Rural Housing Loan or is being sold from FmHA inventory."

10. In § 1944.16 paragraph (c) is amended by adding the following after the first sentence: "Manufactured homes will not be repaired unless authorized in § 1944.40 or Exhibit F, paragraph (IV)(d) of this subpart.

11. Section 1944.16 is amended by adding paragraph (e) to read as follows:

§ 1944.16 Building requirements.

* * * * *

(e) *Manufactured homes.* Exhibit F of this subpart contains supplemental information concerning building requirements for manufactured homes.

§ 1944.17 [Amended]

12. In § 1944.17 paragraph (a)(1) is amended by replacing the period at the end of the sentence with a comma and adding the following: "except as provided in Exhibit F of this subpart."

13. Section 1944.17 is amended by adding paragraph (a)(2)(vi) to read as follows:

§ 1944.17 Maximum loan amounts.

(a) * * *

(2) * * *

(vi) The manufactured home and site meet the requirements in Exhibit F of this subpart and Exhibit J of Subpart A of Part 1924 of this chapter.

* * * * *

14. Section 1944.22 is amended by revising paragraph (a) to read as follows:

§ 1944.22 Refinancing debts.

(a) Refinancing of FmHA debts and debts on a building site without a dwelling or debts on a manufactured home is not authorized.

* * * * *

15. Section 1944.24 is amended by revising paragraph (b) to read as follows:

§ 1944.24 Technical services.

* * * * *

(b) *Planning and performing site development work.* Any site development will be planned and completed in accordance with Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5), except as provided for manufactured homes in Exhibit J of Subpart A of Part 1924 of this chapter. Subdivisions will be accepted by FmHA without further processing when the developer provides written evidence of current subdivision acceptance by HUD or VA. The developer must also provide proof of compliance with exception conditions established by HUD or VA. Such evidence will be reviewed and approved by the State Director.

* * * * *

§ 1944.25 [Amended]

16. In § 1944.25 paragraph (c) is amended in the first sentence by adding between the phrases "33 years" and "from the date" the following: "(30 years for a manufactured home loan)".

17. Section 1944.30 is amended by adding paragraph (b)(8) to read as follows:

§ 1944.30 Preparation of loan docket.

* * * * *

(b) * * *

(8) When the loan is for a manufactured home, the supplemental information needed is listed in Exhibit F, paragraph XVIII of this subpart.

18. In Section 1944.34, paragraph (f)(1)(iii) is amended in the first sentence by adding between the phrases "33 years" and "unless authorized" the following: "(30 years for a manufactured home loan)".

19. Section 1944.40 is amended by revising the introductory text to read as follows:

§ 1944.40 Rural housing disaster (RHD) loans.

RHD loans may be made to repair (except no RHD loan may be made on a manufactured home unless the unit is already financed with a Section 502 rural housing loan) or replace dwellings which were damaged or destroyed by a natural disaster such as earthquake, flood, forest fire, severe windstorm or lightning.

* * * * *

20. Section 1944.45 is amended by revising paragraph (a), introductory text of paragraph (b), and (c)(2) to read as follows:

§ 1944.45 Conditional commitments.

(a) *General.* A conditional commitment is assurance from FmHA to a qualified builder, dealer-contractor or seller that a dwelling to be built, rehabilitated, or developed as a manufactured home package and offered for sale will be acceptable for purchase by qualified RH loan

applicants if built in accordance with FmHA approved plans and specifications and priced at not more than a specified maximum amount. The conditional commitment does not reserve funds for a loan nor does it assure that the area the dwelling is in will remain rural or that an eligible loan applicant will be available to buy the dwelling.

(b) *Eligibility.* To be eligible for conditional commitments, the builder, dealer-contractor, or seller must:

* * * * *

(c) * * *

(2) Conditional commitments will be issued by FmHA only for new homes to be constructed, new manufactured homes, or existing homes (other than manufactured) to be rehabilitated.

* * * * *

§ 1944.45 [Amended]

21. In Section 1944.45, paragraph (d) is amended in the first sentence by adding between the phrases "to a builder" and "who packages" the following: "or dealer-contractor."

22. In Section 1944.45 paragraph (h) is amended in the first sentence by removing "Exhibit D" and adding in its place the following: "Exhibits D and J (for manufactured homes)".

23. In Section 1944.45 paragraph (k) is amended in the first sentence by adding between the phrases "builder" and "or seller" the following: "dealer-contractor"; and between the phrase "Builder's Warranty" and "or provide" the following: "(manufactured home warranty will be in accordance with Exhibit F, paragraph XIII of this subpart)".

24. Paragraph IIB of Exhibit A of Subpart A is amended by adding at the end of the paragraph the following: "Additional information required for manufactured homes is listed in Exhibit F, paragraph XVIII of this subpart."

25. Subpart A is amended by adding Exhibit F which reads as follows:

Exhibit F—Supplemental Requirements for Making Section 502 RH Loans for Manufactured Homes

Paragraph

I. What are the general conditions for financing a manufactured home?

a. This Exhibit provides for the financing of a manufactured home (herein called unit) with a Section 502 Rural Housing loan. Manufactured structures (as described in Exhibit B to Subpart A of Part 1924), generally referred to as modular homes that are constructed to the FmHA adopted MPS or FmHA recognized building codes, are not affected by this Exhibit. All parts of Part 1944, Subpart A of this chapter apply unless modified by this Exhibit.

b. FmHA may finance a manufactured home if both the unit and its site are covered by the mortgage or Deed of Trust. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the site and unit as real property and insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The unit and site must be taxed as real estate by the jurisdiction where located, if such taxation is permitted under applicable law, when the loan is closed. FmHA may not finance a lot for a unit already owned by the applicant. It is a violation of this regulation to finance furniture or to refinance any existing debts owed by the applicant/borrower.

II. What are the definitions of terms used in this Exhibit?

As used in this Exhibit the term—

a. "Manufactured Home" (Unit) means a structure which is built to the Federal Manufactured Home Construction and Safety Standards and FmHA Thermal requirements. It is transportable in one or more sections, which in the traveling mode is ten body feet or more in width, and when erected on site is four hundred or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure. For the purpose of the FmHA Section 502 manufactured home program permanent foundations are required.

b. "Furniture" means movable articles of personal property such as drapes, beds, bedding, chairs, sofas, divans, lamps, tables, televisions, radios, or stereo sets, and other similar items of personal property, but furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, washing machines, clothes dryers, heating or cooling equipment or other similar items.

c. "Single Wide" means a dwelling unit that is 12 or more feet in width and contains 400 or more square feet. It is a totally self-contained dwelling unit as transported from the factory on a single permanent chassis.

d. "Double Wide" means two or more sections transported from the factory on a permanent chassis intended to be joined together horizontally when located on the site, but capable of independent movement. The sections when joined together must be 20 or more feet in width.

e. "Eligible Options" mean items that could be financed under the Section 502 Program but are not included in the base price for the manufactured home unit. Examples are appliances, wiring for dryer, plumbing for washer, standard bathroom and kitchen fixtures, etc.

f. "Federal Manufactured Home Construction and Safety Standards" (FMHCSS) mean a 1976 Federal Standard commonly known as the HUD standards for the construction, design and performance of a manufactured home which meets the needs of the public including the need for quality, durability and safety. Units conforming to the FMHCSS are certified by an affixed label that reads as follows:

AS EVIDENCED BY THIS LABEL NO. _____THE MANUFACTURER CERTIFIES TO THE BEST OF THE MANUFACTURER'S KNOWLEDGE AND BELIEF THAT THIS MANUFACTURED HOME HAS BEEN INSPECTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND IS CONSTRUCTED IN CONFORMANCE WITH THE FEDERAL MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE. SEE DATA PLATE.

g. "Dealer-Contractor" is a person, firm, partnership or corporation in the business of selling and servicing manufactured homes and developing sites for manufactured homes. A person, firm, partnership or corporation not capable of providing the complete service is not eligible to be a "dealer-contractor."

h. "New Unit" means a unit not previously occupied as a residence and less than 1 year old.

i. "Existing Unit" is a unit previously occupied as a residence or more than 1 year old.

j. "Design Approval Primary Inspection Agency" (DAPIA) is a state or private organization which has been approved by the Secretary of HUD to evaluate (i.e. approve or

disapprove) manufactured home designs and quality control programs.

III. What are the applicant eligibility requirements?

An applicant meeting the eligibility requirements of §§ 1944.8 and 1944.9 of this subpart is eligible for a loan on a manufactured home.

IV. For what purposes may Section 502 RH loan funds be used?

FmHA may finance the following when a real estate mortgage covers both the unit and the lot:

a. A new unit for a site owned by the applicant which meets the requirements and limitations of § 1944.11 of this subpart or a leasehold meeting the provisions of § 1944.15(a)(5) of this subpart.

b. A new unit and a site which meets the requirements of § 1944.11 of this subpart.

c. Site development work. The types of site development required and permitted are in paragraph VI of this Exhibit and Part 1924, Subpart A of this chapter.

d. Subsequent loans for equity or repair with a transfer, credit sale, or a subsequent loan for repair of a unit if the unit is currently financed with a Section 502 Rural Housing loan.

e. Transportation and set-up costs if a new unit is financed.

V. For what purposes may Section 502 RH funds not be used?

FmHA may *not* use loan funds to finance:

a. An existing unit and site unless it is already financed with a Section 502 Rural Housing loan or is being sold from FmHA inventory.

b. The purchase of a site without also financing the unit.

c. Existing debts owed by the applicant/borrower.

d. A unit without an affixed certified label indicating the construction of the unit is in accordance with the FMHCSS.

e. Alteration or remodeling of the unit when the initial loan is made.

f. Furniture as defined in this Exhibit.

g. Any unit not constructed to the FmHA thermal standards as identified by an affixed label for the winter degree day zone where the unit will be located.

h. A unit that at the time of loan approval would result in more than one person per room. The number of rooms include bedrooms, living room, dining room, kitchen, den or family room.

i. Repairs unless authorized in paragraph (IV)(d) of this Exhibit.

VI. What are the building and siting requirements?

The unit must be modest in design, size and cost as defined in § 1944.16(a) of this subpart. The floor area must be 400 square feet or more, and the width 12 feet or more for a single wide unit and 20 feet or more for a double wide unit. Construction of the unit must conform with the FMHCSS as evidenced by an affixed certification label. The unit must be constructed to the FmHA thermal requirements of Exhibit D of Subpart A of Part 1924 of this chapter and identified by an affixed label as required in paragraph XIV c 3 of this Exhibit. Site development and set-up must conform to Exhibit J of Subpart A of Part 1924 of this chapter.

VII. How will a manufactured home be appraised?

a. The appraiser will use normal single family residential appraisal techniques when appraising a manufactured home and the site. Since other manufactured homes and sites provide the most similar comparables, every effort must be made to obtain such comparables even if their distance from the subject is greater than normally desirable. If other units are not available within a reasonable distance, the appraiser may use other than manufactured homes after adjusting for location, construction material, size, quality, etc.

b. The appraiser will use Marshall and Swift cost data for manufactured housing to determine the cost approach. An alternate cost method may be substituted for Marshall and Swift with prior authorization from the National Office.

VIII. What are the loan limitations?

A loan for a new unit, new unit and site or an existing site and unit may not exceed the final reconciliation/estimated value of the developed security as determined by a real estate appraisal.

IX. How does a dealer-contractor qualify to participate in the program?

A dealer-contractor may apply to participate by submitting Form FmHA 1944–5, "Dealer-Contractor Application," and a current financial statement prepared by a public accountant and certified by the dealer to the FmHA County Supervisor. A person, firm, partnership or corporation unable to provide a full service of sales, service, erection and site development is not eligible to participate as a dealer-contractor. To qualify to participate a dealer-contractor must be:

a. Financially responsible,

b. Qualified to perform satisfactorily the set-up of the homes and site development work,

c. Equipped to extend proper services to the customer, and

d. Willing to provide a warranty as required in paragraph XIII of this Exhibit.

X. What are the County Supervisor's, District Director's and State Director's responsibilities in evaluating a dealer-contractor?

a. The County Supervisor will:

1. Maintain an operational file for each dealer-contractor who submits Form FmHA 1944–5, "Dealer-Contractor Application," and a certified financial statement.

2. Obtain a commercial credit report on the firm and consumer credit reports on each of the principals.

3. Make direct checks on trade and bank references and check with the local Better Business Bureau.

4. Inspect the dealer's place of business to determine the permanency of same and the adequacy of available equipment.

5. Obtain copies of brochures, descriptive literature, guarantees, sales contracts, and price lists.

6. Determine that the dealer-contractor has the necessary equipment and experience to perform or subcontract all site development work. If the firm uses subcontractors, obtain the names of the subcontractors and their qualifications. A field inspection of recently developed sites and set-ups would be desirable in determining whether the dealer-contractor has the necessary experience.

7. Carefully analyze the above information to determine if the dealer-contractor is able to provide the full service of sales, service, erection and warranty of manufactured homes and developing sites for them. Submit, through the District Director, to the State Director a recommendation with supporting documentation as to whether or not the dealer-contractor is acceptable.

8. Maintain a complaint file on each dealer-contractor to establish a basis for limiting future business with that dealer-contractor, if necessary. Any *unresolved* complaints are reasons for possible debarment action under Subpart E of Part 1924 of this chapter.

b. The District Director will review the County Supervisor's recommendations and forward them, with any additional comments, to the State Director for review.

c. The State Director will make the decision on dealer-contractor's acceptability and, if acceptable, issue a letter of acceptance. The State Director will also issue a list of acceptable dealer-contractors in the state as a supplement to this Exhibit. If the State Director determines the dealer-contractor not acceptable, appeal rights will be granted as if the decision were covered by Subpart B of Part 1900 of this chapter. Any dealer-contractor held not to be acceptable may reapply for acceptance at any time the dealer-contractor has reason to believe the conditions leading to the determination have been removed.

XI. What are the contract requirements?

The dealer-contractor must sign Form FmHA 424–6, "Construction Contract," which will cover both the unit and site development work. The "borrower method" of development or use of multi-contracts is *prohibited.* A dealer-contractor may use subcontractors if the dealer-contractor is *solely* responsible for all work under the contract. Payment for all work will be in accordance with Form FmHA 424–6 and Subpart A of Part 1924 of this chapter, except no payment will be made for materials or property stored on site (e.g. payment for a unit will be made only after it is permanently attached to the foundation).

XII. What are the lien release requirements?

All persons furnishing materials or labor in connection with the contract must sign Form FmHA 424–10, "Release by Claimants," except the manufacturer of the unit. The manufacturer of the unit must furnish an executed manufacturer's certificate of origin that the unit is free and clear of all legal encumbrances. The use of Form FmHA 424–10 is optional in a State if the State Director has issued a State supplement not requiring its use. However, in all states the certificate of origin is required.

XIII. What are the warranty requirements?

A dealer-contractor must provide a warranty in accordance with the provisions of § 1924.9(d) of Subpart A of Part 1924. The warranty must identify the unit(s) by serial number(s). The dealer-contractor must certify that the manufactured home property substantially complies with the plans and specifications and the manufactured home sustained no hidden damage during transportation and, if manufactured in separate sections, that the sections were properly joined and sealed according to the manufacturer's specifications. The dealer-contractor will also furnish the applicant with a copy of all manufacturer's warranties.

XIV. What are the requirements for inspections and design reviews?

a. The County Supervisor will inspect and review for purposes of determining that the government's security is adequate and that the general goals of the program are being complied with but not for the protection of the specific borrower:

1. That the unit has a properly affixed certification label indicating the construction of the unit is in accordance with the FMHCSS.

2. That the unit is modest in size, design and cost in accordance with § 1944.16 of this subpart and other housing financed for similar applicants in the area.

3. That the thermal design certification has been provided as required in paragraphs XIV(c)(2)(i) or XIV(c)(2)(ii).

4. That the unit contains the manufacturer's thermal certification as required in paragraph XIV(c)(3) of this Exhibit, and that the certified winter degree days are correct for the location of the unit.

5. To determine compliance with Exhibit J of Subpart A of Part 1924 of this chapter for all onsite development and features not covered by the FMHCSS.

6. To determine foundation support locations, loads and connection requirements specified by the manufacturer as a basis for evaluating foundation compliance with Exhibit J of Subpart A of Part 1924 of this chapter and for determining design suitability for the soil conditions.

7. To determine compliance with site development requirements including required siting approval by State and local authorities, when those entities regulate manufactured home siting.

8. To determine that the site is in compliance with Subpart G of Part 1940 of this chapter.

b. Designs must be reviewed and construction must be inspected in accordance with the procedures established by the Secretary of HUD in 24 CFR Part 3282.

c. Units must be designed and constructed in accordance with Exhibit D to Subpart A of Part 1924, "Thermal Performance Construction Standards."

1. The manufacturer must assign a unique designation to the design for each unit proposed for FmHA financing. This designation may not be repeated for any design package with a lower thermal resistance.

2. The unit must be designed to conform with either the prescriptive standards in paragraph IV A of Exhibit D to Subpart A of Part 1924, or the optional standards in paragraph IV C of Exhibit D to Subpart A of Part 1924.

(i) If a manufacturer proposes that a design conform with paragraph IV A of Exhibit D to Subpart A of Part 1924, then a DAPIA, qualified registered engineer or qualified registered architect must evaluate the thermal design of the unit and determine the maximum number of winter degree days in which the unit may be located based on paragraph IV A of Exhibit D to Subpart A of Part 1924. This determination must be certified in writing by the DAPIA, qualified registered engineer or qualified registered architect before FmHA will accept the unit for financing. This certification shall include the date, the name of the manufacturer, the model number, the design package number, and the maximum number of winter degree days in which the unit may be located. The manufacturer must submit a copy of this certification, prior to loan approval, to the FmHA loan approval official. This certification shall be filed in the loan docket.

(ii) If a manufacturer proposes that a design conform with paragraph IV C of Exhibit D to Subpart A of Part 1924, then the manufacturer shall submit to the FmHA State Office all drawings, sketches, material descriptions, thermal calculations, and any other information needed to substantiate design conformance. This shall be submitted to the State Office for the State in which the manufacturing plant is located. The State Office architect or engineer will review this submittal. Approval authority of designs shall be in accordance with paragraph IV C of Exhibit D to Subpart A of Part 1924. The State Office shall notify County and District Offices of models with approved thermal designs and other State Offices will be notified, if requested by the manufacturer. A State Office notification shall be accepted by other State Offices. Notifications shall include the manufacturer's name, model number, design package number, and the maximum number of winter degree days in which the unit may be located. A copy of this notification shall be filed in the loan docket.

3. The manufacturer must provide the following certification on a sticker approximately 4 inches by 6 inches affixed in a permanent manner near the HUD data plate: "This unit is constructed in accordance with design package _____ which conforms with the Farmers Home Administration thermal standards for _____ winter degree days. The thermal design of this unit was reviewed by _____. This unit was constructed by _____." The manufacturer will insert into the first blank space the designation for the design package, into the second blank space the maximum number of winter degree days identified in paragraph XIV(c)(2), into the third blank space the name of the DAPIA, registered engineer or registered architect which reviewed the thermal design in paragraph XIV(c)(2)(i) (or insert "FmHA" if reviewed in accordance with paragraph XIV(c)(2)(ii)), and into the fourth blank space the name of the manufacturer.

XV. What are the rates and terms of the loan?

The interest rates are the same as for other real estate loans made with Section 502 rural housing loan funds. The term of the loan may be up to 30 years for both single-wide and double-wide units.

XVI. Can a borrower be granted interest credit with a Section 502 RH loan on a manufactured home?

A borrower may receive interest credit under the conditions of § 1944.34 of this subpart.

XVII. May a dealer-contractor obtain conditional commitments for manufactured homes?

A dealer-contractor may obtain conditional commitments under § 1944.45 of this subpart.

XVIII. What information must an RH applicant submit with a request for financing a manufactured home?

In addition to the information required in Subpart A of Part 1944 of this chapter, an applicant must submit the following:

a. A plot plan and site development plan under Subpart A of Part 1924 of this chapter.

b. An itemized cost breakdown of the total package including the base unit, eligible options, site development, installation, set-up, lot costs and any credit for wheels and axles.

c. A statement signed by the dealer-contractor that any cash payment or rebate as a result of the purchase of the manufactured home will be deducted from the price of the unit and not paid to the applicant.

d. A statement signed by the dealer-contractor that this is the full price of the unit and all development, and if furniture is being purchased by the applicant, that a lien will not be filed against the FmHA security property.

XIX. What are the other considerations?

a. Development under the mutual self-help and borrower construction methods is not permitted for manufactured homes.

b. Debarment procedures apply to dealer-contractors who are removed from the list of approved dealer-contractors.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

26. Section 1944.205 is amended by adding paragraphs (dd) through (gg) to read as follows:

§ 1944.205 Definitions.

* * * * *

(dd) *Manufactured home (unit).* A dwelling unit which is built to conform with the Federal Manufactured Home Construction and Safety Standards and FmHA thermal requirements. It is transportable in one or more sections, which in the traveling mode is ten body feet or more in width, and when erected on site is four hundred or more square feet, and which is built on a permanent

chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure. For the purpose of this Subpart, it is a dwelling attached to a permanent foundation after all development is completed.

(1) "Single Wide" means a dwelling unit that is 12 or more feet in width and contains 400 or more square feet. It is a totally self-contained dwelling unit as transported from the factory on a single permanent chassis.

(2) "Double Wide" means two or more sections transported from the factory on a permanent chassis intended to be joined together when located on the site, but capable of independent movement. The sections when joined together must be 20 or more feet in width.

(ee) *Manufactured home rental project.* A parcel or parcels of land located in the same community which contain two or more manufactured home units on each parcel for rental occupancy and is operated under one management plan with one loan agreement/resolution.

(ff) *Federal Manufactured Home Construction and Safety Standards (FMHCSS).* A 1976 federal standard, commonly known as the HUD Standard, for the construction, design and performance of a manufactured home which meets the needs of the public including the need for quality, durability and safety. Units conforming to the FMHCSS are certified by an affixed label that reads as follows:

AS EVIDENCED BY THIS LABEL NO._____ THE MANUFACTURER CERTIFIES TO THE BEST OF THE MANUFACTURER'S KNOWLEDGE AND BELIEF THAT THIS MANUFACTURED HOME HAS BEEN INSPECTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND IS CONSTRUCTED IN CONFORMANCE WITH THE FEDERAL MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE. SEE DATA PLATE.

(gg) *Dealer-Contractor* is a person, firm, partnership or corporation in the business of selling and servicing manufactured homes and developing sites for manufactured homes for persons who purchase such homes for purposes other than resale. Dealer-contractor will be qualified as shown in FmHA Instruction 1944–A, Exhibit F, sections IX and X, except all processing will be handled by the District Director rather than the County Supervisor.

27. Section 1944.223 is added to read as follows:

§ 1944.223 Supplemental requirements for manufactured home rental project development.

This section includes additional provisions that apply to the making of loans for manufactured home rental project development. This section will apply in addition to all other applicable requirements contained elsewhere in this subpart. All references in this subpart to projects and housing for rent to eligible occupants shall also mean the rental of sites with manufactured homes within a rental project development.

(a) *Eligible projects.* At the time a loan is closed on a manufactured home rental project, the owner/borrower shall have constructed and completed, pursuant to a commitment given in accordance with § 1944.235(c)(1) of this subpart, or shall be obligated to construct and complete, pursuant to § 1944.235(c)(2) of this subpart, such project designed principally for rental use for manufactured homes, and conforming to the development, installation and set-up requirements of Exhibit J to Subpart A of Part 1924 of this chapter.

(1) The project owner/borrower must be the first owner purchasing the manufactured homes for purposes other than resale.

(2) The project must include two or more contiguous sites with dwelling units. Each manufactured home unit must not have been previously occupied as a residence or for any other purpose and be less than 1 year old from date of manufacture.

(3) A project is not eligible if the purpose of the loan is to refinance the project, except as provided for in § 1944.212(p) of this subpart.

(4) A loan may be made to rehabilitate manufactured home units of an existing project only if the units to be rehabilitated are currently financed by FmHA under this subpart.

(5) An eligible project may include the purchase of the real property of an existing project which will be redeveloped with the placement of new, previously unoccupied, manufactured homes and conforming to the development, installation and set-up requirements of Exhibit J to Subpart A of Part 1924 of this chapter.

(b) *Loan limitations.* The maximum loan amount shall be determined in accordance with § 1944.213(a) (1) or (2) of this subpart as applicable.

(c) *Rates and terms.* The amortization period of each loan shall not exceed the economic life of the security, taking into account probable depreciation. However, under no circumstance shall the amortization period for the loan made under this section exceed 30 years from the date of the promissory note.

(d) *Security.* A mortgage or deed of trust will be taken on the entire property purchased or improved with the loan. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the project (including the manufactured homes) as real property and ensures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The property must be taxed as real estate by the jurisdiction where the project is located if such taxation is permitted under applicable law when the loan is closed.

(e) *Property requirements.*

(1) Construction and development of the project, including related facilities constructed or erected on the security property, shall be in accordance with § 1944.222(d) of this subpart and Exhibit J to Subpart A of Part 1924 of this chapter.

(2) Manufactured home rental projects shall be designed to provide for a desirable residential environment. Innovative and imaginative design is encouraged. Stylized patterns and monotony shall be avoided. All property improvements shall relate to the individual characteristics of the land. The project, including structures, streets, and all site improvements, should be harmoniously, efficiently and conveniently arranged in relation to the topography and the shape of the property.

(3) The owner/borrower shall not use or permit the use of any portion of the security property for demonstrating mobile home models for sale promotion purposes.

(4) The use and character of adjacent properties shall not adversely affect the project. However, the project shall be reasonably accessible to shopping centers or neighborhood stores, sources of employment, neighborhood parks, schools, if families with children are anticipated, and to other community services and facilities as appropriate for the size, scope and character of the project.

(5) Any portion of a project which is devoted to common use will be primarily for the use of, or service to, the project occupants. Any nonresidential

use of the property must be subordinate to the residential use and character of the property. However, adequate passive and/or active recreation area shall be provided to meet the needs of the tenants. For example, tots lots equipped for small children's play shall be provided if it is anticipated that there will be children residing in the project.

(6) The domestic water supply and sewage disposal systems must meet state and local as well as FmHA standards in accordance with § 1804.66 of Subpart D to Part 1804 of this chapter (paragraph VI of FmHA Instruction 424.5).

(7) Parking spaces may be provided at each individual unit or in courts or bays. The number of spaces should be adequate to meet the needs of residents and their guests without interference with normal traffic.

(8) Each manufactured home should be fitted to the terrain with the least possible distrubance to the land. Existing trees, shrubs and ground cover shall be preserved to the extent possible and used to enhance the project. Additional plantings shall be provided to screen undesirable views, for shade and for visual appeal. All existing vegetation and proposed plantings shall be shown on the site plan or on a separate planting plan.

(9) The manufactured home, when placed on site, shall have floor space area of not less than 400 square feet, and a width of 12 feet or more for single wide and 20 feet or more for a double wide unit. The unit must:

(i) Be placed on a site-built permanent foundation that meets or exceeds applicable requirements of the FmHA adopted standards which are identified in Exhibit J to Subpart A of Part 1924 of this chapter or other building codes approved by FmHA.

(ii) Be permanently attached to the foundation by anchoring devices adequate to resist all loads identified in Exhibit J to Subpart A of Part 1924 of this chapter or other building codes approved by FmHA.

(iii) Be constructed in compliance with FmHA Thermal Performance Construction Standards as specified in Exhibit D to Subpart A of Part 1924 of this chapter. The unit must have an affixed label as specified in paragraph XIV(c)(3) of Exhibit F to Subpart A of Part 1944 of this chapter indicating that the unit is constructed to FmHA thermal requirements for the appropriate winter degree days.

(iv) Be constructed in compliance with applicable standards and manuals adopted by FmHA as evidenced in Part A, paragraph V of Exhibit J to Subpart A of Part 1924 of this chapter. All units must conform to the HUD "Federal Manufactured Home Construction and Safety Standards," and must be identified by an afixed certification label as defined in § 1944.205(ee) of this subpart.

(f) *Special warranty requirements.* The project general contractor or dealer-contractor, as may be applicable, must provide a warranty in accordance with the provisions of § 1924.9(d) of Subpart A of Part 1924 of this chapter.

(1) The warranty shall provide that the manufactured homes, foundations, positioning and anchoring of the units to their permanent foundations, and all contracted improvements are constructed in substantial conformity with applicable approved plans and specifications.

(2) The warranty shall also include provisions that the manufactured homes sustained no hidden damage during transportation, and for double-wide units, that the sections were properly joined and sealed.

(3) The project general contractor or dealer-contractor must warrant that the manufacturer's warranty is in addition to and not in derogation of all other warranties, rights and remedies that the owner/borrower may have.

(4) The seller of the manufactured homes will deliver to the owner/borrower the manufacturer's warranty. The warranty shall identify the units by serial number.

28. Section 1944.232 is amended by revising paragraph (f) to read as follows:

§ 1944.232 Preparation of completed loan docket.

* * * * *

(f) *Submission of docket to National Office.* If the State Director considers it necessary after completing the review of the docket, the State Director may submit recommendations, a copy of a proposed memorandum of approval, and the complete loan docket to the National Office for review and recommendations. If the docket was required to be reviewed (or was reviewed) by OGC, the comments of that office will be included. Prior review and concurrence by the National Office before loan approval will in all cases be required for all projects involving congregate housing, group type living arrangements or manufactured housing.

* * * * *

29. In Exhibit B of Subpart E, the definition for "Basic Rental" in paragraph II D and the introductory text of paragraph III is revised to read as follows:

Exhibit B—Interest Credits on Insured RRH and RCH Loans

* * * * *

II * * *

D *"Basic Rental"* means a unit rental charge determined on the basis of operating the project with payments of principal and interest on a loan to be repaid over a 30-year or longer period at 1 percent per annum.

* * * * *

III *Eligibility:* Borrowers may receive interest credits provided the loan (1) was made on or after August 1, 1968, to a nonprofit corporation, consumer cooperative, State or local public agency, or to any individual or organization operating on a limited profit basis; (2) is repaid over a period of 30 years or more; and (3) meets the other requirements of this Exhibit subject to the following limitations:

* * * * *

Dated: August 8, 1986.

Kathleen W. Lawrence,

Acting Under Secretary, Small Community and Rural Development.

[FR Doc. 86-25969 Filed 11-17-86; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-ANM-11]

Establishment of Rifle, CO, Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Rifle, Colorado, 700 foot and 1,200 foot transition areas. The transition areas are necessary to provide controlled airspace for aircraft conducting Instrument Flight Rules (IFR) operations at the Garfield County Airport.

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-533, Federal Aviation Administration, Docket No. 86-ANM-11, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2533.

SUPPLEMENTARY INFORMATION:

History

On October 14, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Rifle, Colorado, Transition Areas (51 FR 36562).

Interested parties were invited to participate in this rulemaking proceeding by submitting written

comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was published in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will provide controlled airspace for aircraft conducting IFR operations with a new instrument approach procedure at the Garfield County Airport, Rifle, Colorado.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

§ 71.171 [Amended]

Rifle, Colorado (New)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Garfield County Airport (lat. 39°31'34" N., long. 107°43'23" W.); and within 5 miles each side of the 093° bearing (080 mag) from the Garfield County Airport extending from the 8-mile radius to 21 miles east of the airport; and that airspace extending upward from 1,200 feet above the surface beginning at lat. 39°44'00" N., long. 107°54'00" W.; to lat. 39°44'00" N., long. 106°57'00" W.; to lat. 39°24'00" N., long. 106°57'00" W.; to lat. 39°24'00" N., long. 107°54'00" W.; to the point of beginning excluding that airspace overlying the Aspen, Eagle, and Meeker, Colorado, transition areas.

Issued in Seattle, Washington, on November 4, 1986.

William E. O'Neill,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-25920 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-3202]

GCS Electronics, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Costa Mesa, Calif. electronics company from making unsubstantiated claims about the capabilities of its portable "Mark II Executive Phone."

DATE: Complaint and Order issued Oct. 30, 1986[1].

FOR FURTHER INFORMATION CONTACT: FTC/B-407, C. Lee Peeler, Washington, DC 20580. (202) 376-8617.

SUPPLEMENTARY INFORMATION: On Friday, Aug. 8, 1986, there was published in the **Federal Register**, 51 FR 28594, a proposed consent agreement with analysis In the Matter of GCS Electronics, Inc., a corporation, and Gene Comfort, individually and as an officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: Sections 13.10 Advertising falsely or misleadingly; 13.170 Qualities or properties of product or service; 13.190 Results; 13.205 Scientific or other relevant facts. Subpart—Corrective Actions and/or Requirements: Sections 13.533 Corrective actions and/or requirements; 13.533-45 Maintain records; 13.533-45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: Sections 13.1710 Qualities or properties; 13.1730 Results; 13.1740 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Mobile telephones, Trade practices.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Emily H. Rock,

Secretary.

[FR Doc. 86-25924 Filed 11-17-86; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket C-2037]

The J.B. Williams Co., Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: The Federal Trade Commission has modified a 1971 order with respondents (36 FR 20588) by terminating a perpetual obligation that the company submit advertising and labeling to the FTC at six month intervals to demonstrate compliance with the order. The FTC concluded that it was in the public interest to relieve respondents of the costs of compliance with this provision.

DATES: Consent Order issued September 9, 1971. Modifying Order issued August 20, 1986.

FOR FURTHER INFORMATION CONTACT: FTC/B-425, Jerry McDonald, Washington, DC 20580. (202) 376-3484.

SUPPLEMENTARY INFORMATION: In the Matter of The J.B. Williams Company, Inc., et al. The prohibited trade practices and/or corrective actions, as set forth at 36 FR 20588, October 27, 1971, remain unchanged.

List of Subjects in 16 CFR Part 13

Weight reducing products, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th St. and Pa. Ave., NW., Washington, DC 20580.

Order Reopening and Modifying Cease and Desist Order Issued on September 9, 1971

Commissioners: Daniel Oliver, Chairman; Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

On February 19, 1986, Beecham, Inc., on behalf of itself and its wholly owned subsidiary, J.B. Williams Company, Inc., petitioned the Commission to reopen the proceeding in Docket No. C–2037 and modify the order against J.B. Williams issued by the Commission on September 9, 1971. Pursuant to Section 2.51 of the Commission's Rules of Practice, Beecham's petition was placed on the public record for comment. No comments were received.

Summary of Order

The order prohibits certain product effectiveness representations in advertising the product, "Proslim", or "any other purported weight reducing or weight control product".

In addition, the order prohibits the dissemination of any advertising which, in any manner, makes reference to scientific or medical tests or studies as substantiating any representation or claim as to the effectiveness or performance of any consumer product, unless such scientific tests or studies do, in fact, substantiate such representation or claim. The order further imposes the continuing obligation on the respondent to submit to the Commission samples of all advertising and labeling every six months to show continued compliance.

Request That Provision Requiring Substantiation for Product Claims be Set Aside

Beecham first requests that Part II of the order, which requires substantiation for product claims, be deleted from the order on the basis of changed conditions of fact and public interest considerations.

Beecham bases its request that Part II be deleted from the order primarily on changed conditions of fact. First, it states that the weight control products that were the subject of the order are no longer being manufactured, advertised or sold. Secondly, it states that J.B. Williams, the "bad actor" involved in the conduct leading to the order, no longer effectively exists. Therefore, Beecham argues that, since the products that were the subject of the order and the transgressor whose conduct led to the order no longer effectively exist, it is in the public interest to eliminate such a fencing-in provision.

In support of its argument that these changed conditions of fact require that Part II be deleted from the order, Beecham cites cases involving appellate review of orders with fencing-in provisions and competition cases where the Commission removed fencing-in provisions from orders because changing market conditions rendered the fencing-in provisions unnecessary. Beecham, however, fails to cite authority for the relief that it is requesting.

The Commission rejects Beecham's argument that the discontinuance of the products that were the subject of the complaint or that corporate personnel changes are changed conditions of fact requiring that the order be modified by deleting Part II from the order. The sale and advertising of weight control products may be resumed. More importantly, Part II is applicable to "any consumer product", not just to weight control preparations. In its April 11, 1984, letter to Beecham denying its prior petition to vacate this order in its entirety, along with others, the Commission rejected Beecham's argument that corporate personnel changes is a sufficient changed condition of fact to justify the relief requested in that petition. No new arguments have been advanced that would establish that this changed condition of fact warrants the modification requested herein. Furthermore, Beecham has cited no authority for its argument that the two asserted factual changes taken together, rather than considered separately, warrant the deletion of a fencing-in provision of an order.

Part II of the order is a limited and reasonable substantiation provision that should not impose unnecessary burdens on Beecham, and Beecham has not shown that it does impose such burdens. Simply stated, Part II merely requires that medical tests or studies do, in fact, substantiate effectiveness or performance claims if Beecham makes reference in advertising to such medical tests or studies. If Beecham does not have medical tests or studies to substantiate such claims, it may not make reference to such medical tests or studies. *See Pfizer, Inc.*, 81 F.T.C. 23 (1972).

Request That, If Part II Is Not Deleted From Order, It Be Qualified by the Addition of a Second Paragraph

If the Commission declines to delete Part II from the order, Beecham asks that the following paragraph be inserted in the order as the second paragraph in Part II of the order:

> Provided, however, that such scientific or medical tests or studies shall be deemed to substantiate any such representation or claim where competent scientific or medical persons retained or employed by respondent have a reasonably good faith belief that such substantiation in fact exists regardless of whether some other scientific or medical person or persons may or do have a belief to the contrary.

The request that the order be modified to place the above paragraph in the order is based on changed conditions of law and public interest considerations. Beecham says that Commission law was changed with *Pfizer, Inc., supra*, in 1972. It argues that Part II of the order may be interpreted by staff acting unreasonable as an "absolute basis" standard, rather than a "reasonable basis" standard. An "absolute basis" standard, according to Beecham, may require that its substantiation be "free from all uncertainties or good faith differences among competent scientists, medical personnel and other experts."

Beecham further argues that the substantiation standard in Part II is ambiguous and that it is "fundamentally unfair" not to provide Beecham with clear guidance on the applicable standard which must be met under Part II.

Arguing that the public interest requires that the order be reopened and modified by the addition of its proposed paragraph, Beecham cites *General Motors Corporation*, 104 F.T.C. 511 (1984), as an order which was modified "to avoid any unintended restriction on the dissemination to the public of information material to purchasing decisions." The *General Motors* approach is equally appropriate here, Beecham argues, "[to] eliminate the ambiguities in the advertising substantiation standards applicable under the Proslim order and to permit Beecham to make representations for which it has a reasonable basis and which consumers may wish to hear."

The Commission does not view Part II of the order as imposing on Beecham an "absolute basis" standard requiring unanimity of all scientists and medical personnel. If Beecham refers to medical tests or studies in its advertising, such tests or studies must substantiate such claim. The ultimate determination of whether Beecham's substantiation does, in fact, substantiate its claim is not made by staff, but it is made by the district court in an enforcement action. On the other hand, the paragraph that Beecham wishes to be placed in the order would, in the Commission's opinion, create an absolute standard. It would establish that the "reasonable good faith belief that such substantiation exists" possessed by "competent scientific or medical persons retained or employed" by Beecham is

absolute "regardless of whether some other scientific or medical person or persons may or do have a belief to the contrary." There is no justification for the substantiation standard proposed by Beecham.

As to the public interest argument, the Commission has found that Beecham has failed to demonstrate that the public interest requires modification. The current situation is not comparable to the factual situation in *General Motors.* In *General Motors,* the modification was considered to be in the public interest because it permitted the flow of information to consumers concerning normal and ordinary handling characteristics of General Motors' vehicles which would have been impossible under the order.

Request That Product Coverage Be Limited

If the Commission declines to delete Part II from the order, Beecham requests that product coverage in Part II be limited to:

> Products intended for consumer use which are (a) sold under a trademark in use by J.B. Williams at the time that J.B. Williams was acquired by Beecham, (b) sold for the same uses as J.B. Williams sold such preparations at such time and (c) composed of substantially the same constituents as were in such products at such time.

The petition notes that the Commission's letter to Beecham of April 11, 1984, denying its request that this order and three other orders be set aside, also advised Beecham that it is bound by this order and the other J.B. Williams orders with respect to its advertising of the J.B. Williams consumer products. Changes in the products make it imperative, according to Beecham, that the Commission provide a more specific definition of which products are J.B. Williams consumer products and which are Beecham consumer products.

The reformulation of Beecham products is said to be a changed condition of fact requiring the product coverage modifications. With reformulations, Beecham asserts that it becomes increasingly difficult to determine whether any such product is still a "preparation of substantially similar composition" or possesses "substantially similar properties" to the old product.

Next, the integration of the J.B. Williams manufacturing facilities with those of Beecham is stated to be a changed condition of fact. Since a J.B. Williams product may be manufactured at a Beecham facility, and a Beecham product may be manufactured at a J.B. Williams facility, Beecham says that the products may be confused.

A final changed condition of fact, according to Beecham, is the dismissal of almost all J.B. Williams management personnel after Beecham's acquisition of that company. None of those responsible for the illegal conduct prohibited by the Proslim order are currently employed by Beecham.

Beecham also argues that adoption of the product coverage modifications is in the public interest "as giving Beecham guidance on precisely which products are and are not" J.B. Williams consumer products "covered by the Order."

The changed conditions of fact and public interest considerations recited in the petition do not justify the relief requested. Product reformulations, the integration of J.B. Williams manufacturing facilities with those of Beecham, management turnover, and the development of new products do not, in the opinion of the Commission, render J.B. Williams consumer products less identifiable. The Commission has previously determined that the order in Docket No. C–2037 only governs the advertising of J.B. Williams' consumer products. J.B. Williams' products and Beecham products are clearly distinguishable. J.B. Williams products would include any products manufactured by J.B. Williams at the time of the acquisition, and modifications thereto, sold and promoted under the same or substantially similar brand names, and any derivative products, *e.g.,* Sominex II, Geritol Complete., etc. However, to the extent that identification of J.B. Williams products is an issue, a determination may be made on a case-by-case basis.

Request That Perpetual Reporting Requirement Be Eliminated

The last modification requested by Beecham would delete from Part IV of the order a requirement that samples of all advertising, labels and labeling for weight control products and all advertisements for any consumer product that refer to scientific or medical tests or studies must be submitted every six months to demonstrate compliance with the order.

Upon consideration of Beecham's petition and other relevant information, the Commission now finds that the public interest warrants reopening the proceeding and modifying Part IV of the order. The record demonstrates that termination of the perpetual periodic obligation to submit advertising and labeling to the Commission to relieve respondent of compliance costs is in the public interest.

It is therefore ordered that this matter be, and hereby is reopened and that the last paragraph of Part IV of the Commission's order be, and hereby is modified to read as follows:

> It is further ordered, That respondents submit to the Commission within sixty (60) days after the order becomes final all advertising, labels and labeling, for "Proslim" or "Proslim 7 Day Reducing" wafers, diet drink mix, or any other purported weight reducing or weight control product, and all advertisements for any consumer product which in any manner make reference to scientific or medical tests or studies as allegedly substantiating any representation or claim as to the effectiveness or performance of any such product, to show the manner of compliance with this order.

By the Commission.

Issued: August 20, 1986.

Emily H. Rock,

Secretary.

[FR Doc. 86–25925 Filed 11–17–86; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 123

[Docket No. 83N–0368]

Frozen Raw Breaded Shrimp; Revocation of Current Good Manufacturing Practice Regulations

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the current good manufacturing practice (CGMP) regulations for frozen raw breaded shrimp because the regulations are no longer necessary.

EFFECTIVE DATE: November 18, 1986.

FOR FURTHER INFORMATION CONTACT: Prince G. Harrill, Center for Food Safety and Applied Nutrition (HFF–210), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0097.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 26, 1969 (34 FR 6977), the agency published a final rule governing CGMP in the food industry (see 21 CFR Part 110). Subsequently, the agency also published several regulations designed to address specific problems unique to the manufacture of certain food products. Among these were the regulations for frozen raw breaded shrimp (21 CFR Part 123) which were published in the **Federal Register** of January 13, 1970 (35 FR 420).

Since 1970, the agency has received numerous comments from industry expressing the views that most problems addressed in the specific CGMP regulations are common to all parts of the food industry. In light of this information, the agency concluded that specific regulations would be unnecessary if Part 110 were revised to apply to most foods. Accordingly, in the **Federal Register** of June 19, 1986 (51 FR 22458), FDA issued a final rule that revised Part 110.

In keeping with the final rule, the agency, in the **Federal Register** of June 19, 1986 (51 FR 22482), published a proposal to revoke the CGMP regulations for frozen raw breaded shrimp. One comment from a trade association was received on the proposed rule. The comment supported the agency's proposal to revoke the CGMP regulation for frozen raw breaded shrimp. Accordingly, FDA announces in this document that it is revoking Part 123—Frozen Raw Breaded Shrimp.

List of Subjects in 21 CFR Part 123

Food packaging, Frozen foods, Seafood.

PART 123—FROZEN RAW BREADED SHRIMP [REMOVED]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402(a)(4), 701(a), 52 Stat. 1046 as amended, 1055 (21 U.S.C. 342(a)(4), 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Chapter I of Title 21 of the Code of Federal Regulations is amended by removing Part 123—Frozen Raw Breaded Shrimp.

Dated: November 12, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-25934 Filed 11-17-86; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3112-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denial

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petition submitted by one petitioner to exclude its solid waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271, of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying this petition is that the petitioner has not substantiated its claim that the waste is non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262–266, and Parts 270, 271 and 124.

EFFECTIVE DATE: May 18, 1987.

ADDRESSES: The public docket for this final petition denial is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F–86–RSDF–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On July 23, 1986, EPA proposed to deny specific wastes generated by several facilities, including Reynolds Aluminum, located in Sheffield, Alabama (see 51 FR 26426).[1] The Agency had previously evaluated the petition which is discussed in today's notice. Based on our review at that time, this petitioner was granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, this petition has been evaluated both for the factors for which the waste was originally listed, as well as other factors and toxicants which reasonably could cause the waste to be hazardous. Based upon these evaluations, the Agency has determined that the petitioning facility has not substantiated its claims that the waste is non-hazardous; therefore, the Agency is denying the petition submitted by this petitioning facility and is revoking the temporary exclusion currently held by this facility.

The denial made final here involves the following petitioner: Reynolds Aluminum, Sheffield, Alabama.

I. Reynolds Aluminum

A. Proposed Denial

Reynolds Aluminum (Reynolds) has petitioned the Agency to exclude its wastewater treatment sludges (filter cake) from EPA Hazardous Waste No. F019, based on the reduction and immobilization of the listed constituents of these wastes.[2] Data submitted by Reynolds, however, fails to substantiate its claim that the listed constituents of concern are present in an immobile form. (See 51 FR 26426–26427, July 23, 1986, for a more detailed explanation of why the Agency proposed to deny Reynolds' petition.)

B. Agency Response to Public Comments

The Agency received comments from the petitioner on September 4, 1986 regarding the Agency's proposed decision to deny the exclusion of their wastewater treatment sludge. Reynolds provided new sampling data for the period from August 8, 1986 to August 17, 1986 to demonstrate that chromium concentrations in their wastewater treatment sludges are well below EPA's allowable concentrations. Reynolds maintains that the reduced chromium concentrations are the result of improvements in their chrome treatment plant operations as of 1983. These improvements include: (1) Personnel changes; (2) closer supervision of their coil coating line and their chrome treatment plant (CTP); and (3) improved maintenance and supervision.

[1] In the same **Federal Register** notice, the Agency also proposed to deny the exclusion of specific wastes generated by the following petitioners: Bethlehem Steel Corp., located in Chesterton, Indiana (see 51 FR 26419); Fisher Guide Div. of General Motors Corp., located in Columbus, Ohio (see 51 FR 26421); General Battery Corp., located in Reading, Pennsylvania (see 51 FR 26423); and Kaiser Aluminum Chemical Corp., located in Spokane, Washington (see 51 FR 26424). The Agency will address these proposed decisions in a separate **Federal Register** notice.

[2] Reynolds was originally granted a temporary exclusion for this waste on November 22, 1982 (see 47 FR 52680).

Reynolds states that they significantly improved the CTP performance and reliability through the supervision and maintenance improvements implemented. Reynolds also claims that, at their facility, maintenance practices significantly impact the operation of the CTP and the quality of the effluent, and that during their initial January 5–9, 1981 delisting sampling and analytical program, the high leachable chromium levels were a direct result of maintenance practices. They assert that the 1981 analytical values are not representative of current operations and should be deleted from the data base on which the petition was evaluated. Reynolds added that during January 5–9, 1981, plant maintenance was installing new tank capacity on the coil coating line which adversely affected performance of the CTP due to atypical CTP influent variability. According to Reynolds, leachable chrome levels determined during this period are not representative of typical CTP operation.

The Agency agrees with the commenter that maintenance practices may significantly impact the operation of a treatment plant and the quality of effluent; however; the influence of maintenance practices on treatment plant reliability at the Reynolds facility is precisely what concerns us. If the quality of effluent is wholly dependent on the level of supervision and maintenance, then future changes in the level of supervision and maintenance could render the the waste hazardous. Since the Agency does not have information indicating that specific process changes which altered the composition of the waste were implemented during the period between the 1981 and 1984 sampling periods, the Agency cannot disregard the 1981 data.

Although Reynolds claims that the installation of new tank capacity in January 1981 renders the January 5–9, 1981 chromium levels non-representative of the current waste, no explanation has been offered as to why the chromium levels from the August and September, 1981 sampling period were two orders of magnitude higher than the levels specified in the 1984 and 1986 data. The Agency, therefore, disagrees with Reynolds' claim that the chrome cake is non-hazardous. The Agency notes that if Reynolds has indeed implemented specific process changes, and can substantiate this claim, then the Agency will re-evaluate Reynolds' petition. If Reynolds submits sufficient additional data in the future to indicate that the housekeeping changes will lead to the consistent generation of a non-hazardous waste, the Agency will propose to exclude Reynolds' waste at that time.

C. Final Agency Decision

For the reasons stated in the proposal, and in the Agency's response to public comments, the Agency believes that the filter cake generated by Reynolds Aluminum is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Reynolds Aluminum for its dewatered wastewater treatment sludge (filter cake) resulting from the chemical conversion coating of aluminum, listed as EPA Hazardous Waste No. F019, which is generated at its Alloy Plant located in Sheffield, Alabama. By this action the Agency also withdraws the temporary exclusion granted for these wastes on November 22, 1982 (see 47 FR 52680).[3]

II. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the petitioner included in this notice having its temporary exclusion revoked and final exclusion denied. This facility will have to revert back to handling its wastes as it did before being granted the exclusion (*i.e.*, they must handle their waste as hazardous). This petitioner will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of this temporary exclusion and denial is six months after publication of this final rule in the **Federal Register.**

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final rule, which would revoke a temporary exclusion and deny a petition from one facility is not major. The affect of this final rule would increase the overall costs for this facility which currently has a temporary exclusion that is being revoked and denied. The actual cost to this company, however, would not be significant. In particular, in calculating the amount of waste that is generated by this one facility that currently has a temporary exclusion and considering a disposal cost of $300/ton, the increased cost to this facility is approximately $45,000, well under the $100 million level constituting a major regulation. This is not a major regulation; therefore, no Regulatory Impact Analysis is required.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only effects one facility, therefore, the overall economic impact on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

(Sec. 3001 RCRA, 42 U.S.C. 6921)

Dated: November 6, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25961 Filed 11–17–86; 8:45 am]

BILLING CODE 6560–50–M

[3] The Agency formally notified Reynolds Aluminum in a letter dated January 14, 1986, that the Characterization and Assessment Division would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Reynolds' petition be denied and that the temporary exclusion for these wastes be withdrawn. Reynolds did not exercise its option to withdraw the petition. See 51 FR 26427, n. 36, July 23, 1986.

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40 CFR Part 261

[SW-FRL-3112-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petition submitted by one petitioner to exclude their solid waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting

petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying this petition is that the petitioner has not substantiated their claim that the waste is non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262–266, and Parts 270, 271 and 124.

EFFECTIVE DATE: May 18, 1986.

ADDRESSES: The public docket for this final petition denial is located in Room S–212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow (202) 382–4675 for appointments. The reference number of this docket is "F–86–FGDF–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On July 23, 1986, EPA proposed to deny specific wastes generated by several facilities, including Fisher Guide Division of General Motors Corporation, located in Columbus, Ohio (see 51 FR 26421). The Agency had previously evaluated this petition which is discussed in today's notice. Based on our review at that time, the petitioner was granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, this petition has been evaluated both for the factors for which the waste was originally listed, as well as other factors and toxicants which reasonably could cause the waste to be hazardous. Based upon these evaluations, the Agency has determined that the petitioning facility has not substantiated their claims that the waste is non-hazardous. The Agency is, therefore, denying the petition submitted by the petitioning facility and is revoking their temporary exclusion.

The denial made final here is for the following petitioner: Fisher Guide Division of General Motors Corporation, Columbus, Ohio.

I. Fisher Guide Division of General Motors Corporation

A. Proposed Denial

Fisher Guide Division of General Motors Corporation (Fisher Guide) has petitioned the Agency to exclude its wastewater treatment sludge, generated at its Columbus, Ohio facility, from EPA Hazardous Waste No. F006.[1] Data submitted by Fisher Guide, however, fails to substantiate its claim that the listed constituents of concern are present in an immobile form. (See 51 FR 26421–26423, July 23, 1986, for a more detailed explanation of why the Agency proposed to deny Fisher Guide's petition.)

B. Agency Response to Public Comments

The Agency received comments from Fisher Guide regarding the proposed denial of their petition. After discussing these comments with EPA, Fisher Guide, for purposes of final action on the proposed denial of their delisting petition, withdrew these comments. In doing so, Fisher Guide expressed their intention to gather additional information and submit a new delisting petition, and therefore asked the Agency to complete its review of their latest information submittal. The Agency intends to do this. The following discussion is the Agency's preliminary response.

Fisher Guide specifically commented on the Agency's use of the VHS model to evaluate petitioned waste streams. Fisher Guide stated in their comments, that the Agency had "shown a willingness to consider dilution processes other than spreading if [these dilution factors could be] incorporated within the general framework of the VHS model." Fisher Guide presented a modified version of the VHS model, one that considered dilution by aquifer recharge, used several site-specific parameters (*e.g.*, annual precipitation rate, distribution coefficients, hydraulic conductivity) as inputs to this modified version, and determined that constituent concentrations (at the compliance point) did not exceed regulatory standards. The Agency has reviewed the derivation of the modified VHS model and its application to Fisher Guide's petitioned waste. (A copy of Fisher Guide's comments is available in the public docket for inspection.)

For all delisting petitions to date, the Agency has evaluated the immediate and potential hazards of a petitioned waste based on waste characterization information and the assumption that the waste would be managed at a non-regulated facility. The VHS model used in Agency delisting decisions is a generic model based on this assumption. The Agency, however, realizes that specific waste management site conditions may differ from those used in the VHS model and include additional factors that provide sufficient protection of the underlying aquifer. The Agency will consider exploring the concept of allowing the use of site-specific factors in delistings. However, at this time the Agency has not developed a strategy for using such site-specific factors. If the Agency pursues a site-specific approach, it will need to determine which combination of site-specific factors are needed to adequately demonstrate the effects of the petitioned waste on ground water. The Agency also will need to determine the need for institutional controls on a site-specific delisting. In particular, the Agency needs to address concerns such as on-site and off-site management (and whether a site-specific demonstration will be allowable in either case), waste transportation controls to ensure that the waste is delivered to the approved site, and controls to ensure the waste is not removed from the approved management area. Ultimately, the Agency will consider developing guidelines to provide petitioners with specific information requirements necessary to present a demonstration using site-specific information. Thus, although site-specific delistings are under consideration there is currently no guidance criteria to evaluate demonstrations based on site-specific information. The Agency has discussed this matter with Fisher Guide. Fisher Guide realizes that if the Agency develops criteria for a site-specific delisting, and it allows for an off-site demonstration, that they may re-petition the Agency and pursue a delisting of their electroplating waste on a site-specific basis.

The Agency has reviewed Fisher Guide's demonstration and has identified several areas of concern. This review, however, is not intended to indicate (1) as a matter of policy whether this particular off-site demonstration will be accepted for delisting purposes if modified in the future, or (2) a complete synopsis of the Agency's concerns, since a particular

[1] Fisher Guide was granted a temporary exclusion for its F006 waste on December 16, 1981 (see 46 FR 61284).

site-specific evaluation approach has not yet been developed. The Agency is concerned about the input parameters selected for this site-specific application and their modification of the VHS model. Fisher Guide claims that in a precipitation rich region, there is not a finite volume of water in an aquifer and that studies in Illinois show that aquifer recharge varies from 10 to 27 percent of total precipitation. The Agency feels that the recharge will be introduced to the aquifer at a slow rate by percolation through the soil, and therefore the total volume of recharge is not immediately available for mixing. The time dependent nature of the mixing and subsequent dilution resulting from recharge needs to be addressed in the modified version of the VHS model. Specifically there is a concern about the delay from the time of recharge until the time of complete dilution and how this delay compares with the magnitude of time attributed to groundwater movement.

In modifying the VHS model, the commenter calculated the contaminant velocity, which is a site-specific parameter. The groundwater velocity is based on the hydraulic conductivity, hydraulic gradient, effective porosity, and the distribution coefficient. The Agency's review of Fisher Guide's methodology for estimating ground water velocity raises several concerns. First, due to the variability in local geology, the hydraulic conductivity, K, is likely to change between the point of disposal and the compliance point. Secondly, the aquifer test method used to generate time-drawdown data and the analytical method(s) used to calculate K can introduce variability into the results. The magnitude and significance of this variability needs to be addressed.

In addition, the possible presence of "short circuit" features in the local geology (*e.g.*, sand lenses, or fractured clays) need to be addressed. Also, the Agency believes that the methodology in measuring the distribution coefficient, a parameter that reflects the retardation of contaminant transport through chemical reaction, raises numerous technical concerns primarily because the site-specific nature of the measurement is lost during the procedure.

The laboratory procedures considered three components: the soil, the representative ground water, and the leachate. The procedure includes the addition of an equilibrating solution (simulates a metal-containing leachate) to a soil sample, agitation and centrifugation of the mixture, and subsequent analysis of the collected supernatant after filtration. Fisher Guide did not identify the origin of the soil samples used in the procedure, and did not explain why the soil samples were thought to be representative of the saturated zone. The Agency, therefore, was unable to determine whether the three soils used in the procedure represented the saturated zone under evaluation. Furthermore, the extreme mixing of the soils during the determination of the distribution coefficient may destroy the true (attenuative) characteristics of the soil. Also, non-filtered, as well as filtered sample analyses, are appropriate. (*i.e.*, EPA recommends that the Total Recoverable Materials Method, a method performed on an unfiltered sample, be the standard technique in determining ground water concentrations of metals.)

The Agency does not believe that the laboratory formulations of "representative" ground water are comparable to actual ground water collected from on-site monitoring wells. The Agency also does not believe that the equilibrating solutions are an adequate simulation of leaching conditions. The Agency notes that leachate will often include impurities such as oil and organic constituents and will often be slightly acidic in a mixed municipal/industrial waste landfill. Thus, the equilibrating solution, which consists of the salt of a specific metal in distilled water, tends to simulate an ideal condition, not a realistic one.

In some aquifers metals will tend to attenuate, and, if the "capacity" of a certain area or zone is exceeded (*i.e.*, the zone is saturated and additional immobilization can not occur) the metal constituents will pass through this zone and travel toward the compliance point. The Agency notes that Fisher Guide did not address these affects of saturation on the immobilization of metal constituents.

Even though the Agency has not established site-specific delisting criteria, as a result of the preliminary review, the Agency believes that Fisher Guide has neither presented data that are representative of the aquifer conditions, nor demonstrated that site-specific conditions would immobilize the particular constituents of concern in the waste (i.e., lead, nickel, chromium, cadmium, and mercury).

The Agency, nevertheless, has evaluated Fisher Guide's petitioned waste using the modified VHS model and assuming that the distribution coefficient is equal to zero (i.e., metal contaminants are not immobilized as a result of aquifer conditions). The Agency's evaluation, using a suggested dilution rate equal to two percent per year and ground water velocity equal to 10 feet per year, resulted in the compliance point concentrations shown in Table 1. (Use of site-specific data increased the VHS model dilution factor from 6.3 to 12.6.). The results still exceed the regulatory standard for chromium, lead, and nickel.

TABLE 1.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituents	Compliance point concentrations		Regulatory standards
	EP	OWEP	
Cd	0.01	0.004	0.01
Cr	[1]0.066	[1]0.26	0.05
Pb	[1]0.129	0.048	0.05
Hg	0.001	0.00002	0.002
Ni	[1]1.9	[1]1.03	0.35

[1] Exceeds regulatory standard.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the wastes generated by the manufacturing processes at Fisher Guide's Columbus facility (for which the petition was submitted) are not rendered non-hazardous by the waste treatment system currently in use. The analysis of the waste, using the VHS model, indicates the potential of the sludge to leach several toxic heavy metals (cadmium, chromium, lead, mercury, and nickel) and contaminate ground water. The Agency, therefore, is denying this petition for exclusion of the wastewater treatment sludges (EPA Hazardous Waste No. F006) produced by Fisher Guide at its facility in Columbus, Ohio. By this action, the Agency also withdraws the temporary exclusion granted for this waste on December 16, 1981 (46 FR 61284).[2]

II. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the petitioner included in this notice having their temporary

[2] The Director of the Characterization and Assessment Division (CAD) formally notified Fisher Guide in a letter dated November 15, 1985, that the CAD would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Fisher Guide's petition be denied and that Fisher Guide's temporary exclusion be withdrawn. Fisher Guide did not exercise its option to withdraw the petition. See 51 FR 26423, n. 18, July 23, 1986.

exclusion revoked and final exclusion denied. They will have to revert back to handling their waste as they did before being granted their temporary exclusion (*i.e.*, they must handle their wastes as hazardous). This petitioner will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of this temporary exclusion and denial would be six months after publication of the final rule in the **Federal Register**.

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation, which would revoke a temporary exclusion and deny a petition from one facility, is not major. The affect of this rule would increase the overall costs for the facility which currently has a temporary exclusion that is being revoked and denied. The actual cost to this company, however, would not be significant. In particular, in calculating the amount of waste that is generated by this facility that currently has a temporary exclusion and considering a disposal cost of $300/ton, the increased cost to this facilities is approximately $1.9 million, well under the $100 million level constituting a major regulation.

This rule is not a major regulation; therefore, no Regulatory Impact Analysis is required.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only affects one facility. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

(Sec. 3001 RCRA, 42 U.S.C. 6921)

Dated: November 7, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25962 Filed 11–17–86; 8:45 am]

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40 CFR Part 261

[SW–FRL–3112–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denials

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petition submitted by three petitioners to exclude their solid waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying these petitions is that the petitioners have not substantiated their claims that the wastes are non-hazardous. The effect of this action is that all of these wastes must be handled as hazardous waste in accordance with 40 CFR Parts 262–266, and Parts 270, 271, and 124.

EFFECTIVE DATE: May 18, 1987.

ADDRESSES: The public docket for these final petition denials is located in Room S–212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number of this docket is "F–86–BSDF–FFFFF". The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On July 23, 1986, EPA proposed to deny specific wastes generated by several facilities, including: (1) Bethlehem Steel Corporation, located in Chesterton, Indiana (see 51 FR 26419); (2) General Battery Corporation, located in Reading, Pennsylvania (see 51 FR 26423); and (3) Kaiser Aluminum, located in Spokane, Washington (see 51 FR 26424).[1] The Agency had previously evaluated the petitions which are discussed in today's notice. Based on our review at that time, the petitioners were granted temporary exclusions. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as other factors and toxicants which reasonably could cause the wastes to be hazardous. Based upon these evaluations, the Agency has determined that the petitioning facilities have not substantiated their claims that their wastes are non-hazardous. The Agency is, therefore, denying the petitions submitted by these petitioning facilities and is revoking their temporary exclusions.

The denials made final here involve the following petitioners:

Bethlehem Steel Corporation, Chesterton, Indiana;

General Battery Corporation, Reading, Pennsylvania;

Kaiser Aluminum, Spokane, Washington.

I. Bethlehem Steel

A. Proposed Denial

Bethlehem Steel Corporation (Bethlehem) has petitioned the Agency to exclude its wastewater treatment sludges and polishing lagoon sludges from EPA Hazardous Waste No. F006, based on the reduction and immobilization of the listed constituents of these wastes.[2] Data submitted by

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[1] In the same **Federal Register** notice, the Agency also proposed to deny the exclusion of specific wastes generated by Reynolds Aluminum, located in Sheffield, Alabama (see 51 FR 26426) and Fisher Guide Division of General Motors Corporation, located in Columbus, Ohio (see 51 FR 26421). The Agency will address these proposed decisions in separate **Federal Register** notices.

[2] Bethlehem Steel was originally granted a temporary exclusion for sludges listed as both F006 and K062 wastes. See 47 FR 52670, November 22, 1982. The waste sludge is no longer listed as a K062 waste due to the redesignation of lime stabilized pickle liquor sludges in the iron and steel industry as non-hazardous (49 FR 23284, June 5, 1984).

Bethlehem, however, fails to substantiate its claim that the listed constituents of concern are present in an immobile form. (See 51 FR 26419–26421, July 23, 1986, for a more detailed explanation of why the Agency proposed to deny Bethlehem's petition.)

B. Agency Response to Public Comments

The Agency received comments from a single commenter regarding its decision to deny an exclusion to Bethlehem for the waste identified in the petition. The commenter questioned the Agency's use of EP extract data in the vertical and horizontal spread (VHS) groundwater model, and cited comments from other parties made in response to the Agency's proposal of the VHS model (see 50 FR 7882–7900, February 26, 1985, and 50 FR 48886–48967, November 27, 1985). These comments centered on three points, namely that: (1) The VHS model overestimates actual constituent concentrations at the compliance point since the VHS model does not include site-specific factors which could decrease or limit constituent concentrations; (2) lysimeter leachate data from the facility should be used instead of EP toxicity data since the lysimeter more accurately characterizes the actual waste leachate than does the EP toxicity test; and (3) ground water data for the facility does not describe any adverse impacts from the on-site management of these sludges.

The Agency believes that these general comments were addressed (for the most part) in the Agency's response to public comments in the VHS Model Final Rule (see 50 FR 48896–48910, Appendix, November 27, 1985). The Agency has not intended that the VHS model evaluation would generally allow for the inclusion of site-specific factors. The hazards posed by a waste are evaluated in the VHS model in terms of a non-RCRA disposal scenario, since it cannot generally be guaranteed that the waste will continue to be managed at a particular site or in accordance with a particular set of site-specific conditions. The Agency may, in the future, consider issuing delistings conditioned upon the disposal of the waste at a specific site. Such delistings could consider site specific factors. However, the Agency has not yet defined what data would be required for such a site-specific delisting.

For example, lysimeter data might, in the future, be used in the evaluation of wastes if the Agency pursues such an approach. At this point, the limited data (three monthly samples of leachate) provided by the commenter does not adequately address a number of the Agency's concerns which have been identified to date, such as the increased potential for constituent release from the wastes due to weathering, the effects of seasonal variations in precipitation pH, the appropriate depth of lysimeters to account for the expected increase in toxicant concentrations at greater pile depths, the representativeness of waste pile composition as measured by lysimeter locations, whether the lysimeter samples were diluted by infiltration of ground-water, or the leaching potential of organic constituents from the waste.

The lysimeter data presented by the commenter is inadequate to allow the Agency to make a reasonable evaluation of the wastewater treatment sludges. Only three samples, representing three months of leachate collection, have been obtained from each lysimeter. Also, only three of the EP toxic metals (cadmium, chromium, and lead) were analyzed in the lysimeter samples, with no data available for the remaining metals. The lysimeter leachate was also analyzed for 91 priority pollutant constituents, of which five (methylene chloride, phenol, 2,4-dimethylphenol, bis(2-ethylhexyl)phthalate, and di-n-octyl phthalate) were detected. Of these five, only bis(2-ethyl hexyl)phthalate was detected in the analysis of the sludges themselves. The Agency does not believe that the lysimeter data provided by the commenter is sufficient to indicate that the waste will not cause environmental problems in the future. Thus, due to the fact that the Agency has not yet determined whether it will consider site specific delisting as well as the data gaps in the submitted lysimeter evaluation, this data cannot be used in lieu of the Agency's present review process, which includes the use of leachate data in the VHS model.

Groundwater data is useful in determining whether the past management of a waste has produced environmental contamination. This type of data, however, refers to past management practices only, and cannot be used in a predictive fashion to establish that contamination will not occur in the future. Consequently, groundwater data for a particular site will not give assurances that a contamination problem will not occur if the waste is managed on-site or at any other site.

The commenter also provided a detailed analytical evaluation of the sludges that were the subject of the petition. The voluminous data presented by the commenter, and summarized in Tables 1 to 5, further substantiates the hazardous nature of these wastes. The maximum total constituent concentrations and the EP leachate and Oily Waste EP (OWEP) leachate concentrations for the terminal polishing lagoon sludges are given in Table 1, while the maximum total constituent and EP and OWEP leachate concentrations for the wastewater treatment plant sludges are given in Table 2.

TABLE 1.—MAXIMUM CONSTITUENT CONCENTRATIONS/TERMINAL POLISHING LAGOON SLUDGE

	Total constituent (mg/kg)	Regular EP leachate (mg/l)	Oily waste EP leachate (mg/l)
As	13	0.018	0.01
Ba	72	3.1	2.5
Cd	9.4	.26	.55
Cr	320	2.52	.53
Pb	1000	1.1	.75
Hg	0.38	.004	.004
Ni	38	1.3	.82
Se	1.5	.024	.058
Ag	2.2	.06	.1
$S^{=}$	2800		

TABLE 2.—MAXIMUM CONSTITUENT CONCENTRATIONS/ WASTEWATER TREATMENT PLANT SLUDGES

	Total constituent (mg/kg)	Regular EP leachate (mg/l)	Oily waste EP leachate (mg/l)
As	27	<0.01	<0.01
Ba	42	1.2	1.2
Cd	13	.2	.15
Cr	500	.25	1.0
Pb	2100	1.4	.89
Hg	1.3	.005	<.002
Ni	120	1.1	.59
Se	.97	.1	.026
Ag	7.8	.14	.08
$S^{=}$	340		

Additional testing of the wastes indicated the presence of a number of organic constituents in Bethlehem's wastes. The results of these tests are given in Table 3.

TABLE 3.—MAXIMUM DETECTED ORGANIC CONSTITUENT CONCENTRATIONS (MG/KG)

	Terminal polishing lagoon sludges	Wastewater treatment sludges
Benzo(a)anthracene	5.3	18
Benzo(a)pyrene	5.4	[1] ND
PCBs	2	1.2
Fluoranthene	3.4	9.9
Phenanthrene	ND	7.3
Pyrene	4.9	11
4-chloro-3-methyl phenol	.9	ND
Bis(2-ethylhexyl)phthalate	15	ND
Naphthalene	ND	4.5

[1] ND=Not detected in the waste.

The leachate concentrations in Bethlehem's wastes were used in the Agency's vertical and horizontal spread

(VHS) model.[3] The results of the Agency's evaluation of the inorganic constituents in Bethlehem's wastes are given in Table 4. The organic constituents of Bethlehem's wastes were also evaluated, using the Agency's organic leaching model (OLM) [4] in order to predict leachate concentrations expected from the waste, and these values were then used in the VHS model to predict the compliance-point concentrations of these constituents. The results of the Agency's evaluation of these organic compounds are given in Table 5.

TABLE 4.—CALCULATED MAXIMUM COMPLIANCE-POINT CONCENTRATIONS/TERMINAL POLISHING LAGOON SLUDGES AND WASTEWATER TREATMENT PLANT SLUDGES (MG/L)

	TPL sludges		WTP sludges		Regulatory standard
	EP	OWEP	EP	OWEP	
As	0.0029	0.0016	<0.0016	<0.0016	0.05
Ba	.49	.40	.19	.19	1.0
Cd	.41	.087	.032	.024	.01
Cr	.40	.084	.040	.16	.05
Pb	.17	.12	.22	.14	.05
Hg	.00063	.00063	.00079	<.00032	.002
Ni	.27	.13	.17	.093	.35
Se	.0038	.0092	.016	.0041	.01
Ag	.017	.016	.022	.013	.05

TABLE 5.—CALCULATED COMPLIANCE-POINT CONCENTRATIONS OF DETECTED ORGANIC CONSTITUENTS (MG/L)

	TPL sludges	WTP sludges	Regulatory standard
Benzo(a)-anthracene	[1] NA	NA	1×10^{-5}
Benzo(a)pyrene	8.1×10^{-5}	[2]	3×10^{-6}
PCBs	9.2×10^{-4}	6.5×10^{-4}	8.1×10^{-6}
Fluoranthene	5.5×10^{-4}	8.9×10^{-4}	2×10^{-1}
Phenanthrene		1.3×10^{-3}	2×10^{-3}
Pyrene	4.6×10^{-4}	7.4×10^{-4}	4
4-Chloro-3-methyl phenol	1.6×10^{-2}		[3] 0.2
Bis(2-ethyl-hexyl) phthalate	1.5×10^{-3}		7×10^{-1}
Napthalene		3.6×10^{-2}	9

[1] NA = Solubility data not available for that compound.
[2] A blank space after a compound name indicates that the compound was not detected in the waste.
[3] Standard for 4-chloro-3-methyl phenol (or 4-chloro-m-cresol) derived from known standard for p-chloro-m-cresol.

The EP toxicity tests, as well as the Oily EP tests, confirmed the potential for these wastes to leach a number of toxic heavy metals and organic constituents and so contaminate ground water. In particular, the maximum leachate concentrations for lead, when used as inputs into the VHS model, produced compliance-point concentrations in excess of the Agency's standard (in both the Oily EP and regular EP tests) for both of the petitioned wastes. The maximum OWEP leachate values for chromium were found to exceed the Agency's standard for the terminal polishing lagoon sludges. The compliance-point concentrations calculated from the maximum EP and OWEP leachate values for cadmium were also found to exceed the Agency's standard in both wastes. It is significant to note that even if the averaged leachate values for lead and chromium were used in the VHS analysis, the resulting compliance-point concentrations would also exceed the Agency's standards. These constituents, therefore, are of concern to the Agency.

Also, the evaluation of the organic compounds present in Bethlehem's wastes indicates that benzo(a)pyrene and polychlorinated biphenyls (PCBs) are present in the terminal polishing lagoon sludges at concentrations that would exceed the Agency's standards. PCBs are also of concern in the wastewater treatment plant sludges. Because of the potential exhibited by these wastes to leach cadmium, chromium, lead, benzo(a)pyrene, and polychlorinated biphenyls, the Agency believes that these sludges should be considered hazardous and should be managed in accordance with the federal hazardous waste regulations. The Agency believes that the additional analytical data presented by the commenter is not sufficient to alter the Agency's former evaluation of the hazardous nature of the sludges.

C. Final Agency Decision

For the reasons stated in the proposal, and in the Agency's response to public comments, the Agency believes that the wastes generated by the manufacturing processes at Bethlehem's Burns Harbor facility (for which the petition was submitted) are not rendered non-hazardous by the wastewater treatment system currently in use. The original analysis of the sludges, using the VHS model, indicated the potential of the sludges to leach several toxic heavy metals (cadmium, lead, barium, and chromium) and contaminate ground water. Additional information provided to the Agency verifies the potential of these wastes to leach metals, *i.e.*, chromium, cadmium, and lead. The Agency, therefore, is denying this petition for exclusion of the wastewater treatment sludges (EPA Hazardous Waste No. F006) produced by Bethlehem Steel at its Burns Harbor facility in Chesterton, Indiana. By this action, the Agency also withdraws the temporary exclusion granted for these wastes on November 22, 1982 (see 47 FR 52670).[5]

II. General Battery Corporation

A. Proposed Denial

The General Battery Corporation (GBC) has petitioned the Agency to exclude the emission control sludges produced at its Reading, Pennsylvania facility from EPA Hazardous Waste No. K069.[6] Data submitted by GBC, however, fails to substantiate its claim that the listed constituents of concern are present in an immobile form. (See 51 FR 26423–26424, July 23, 1986, for a more detailed explanation of why the Agency proposed to deny GBC's petition.)

B. Agency Response to Public Comments

The Agency received comments from a single commenter regarding its decision to deny an exclusion to General Battery for the waste identified in the petition. The commenter cited the use of lime in the facility operations, and indicated that sludges generated by the treatment process (using commercially available lime) cannot be expected to meet VHS model limits, due to the high amounts of lead in the lime. The Agency wishes to repeat that the evaluation of a listed hazardous waste for the purpose of delisting will include all hazardous constituents found in the waste, regardless of whether they may have originated from a listed or non-listed

[3] See 50 FR 7882, Appendix I, February 26, 1985 for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

[4] The best-fit OLM model proposed in the Notice of Availability on July 29, 1986 (see 51 FR 27061) was used to evaluate the organic constituents in Bethlehem's waste.

[5] The Agency formally notified Bethlehem Steel in a letter dated January 14, 1986, that the Characterization and Assessment Division would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Bethlehem's petition be denied and that Bethlehem's temporary exclusion for these wastes be withdrawn. Bethlehem did not exercise its option to withdraw the petition. See 51 FR 26421, n.9, July 23, 1986.

[6] GBC was originally granted a conditional temporary exclusion on August 6, 1981, with the condition that the emission control sludge be kept separate from other wastes generated at the facility (see 46 FR 40159).

source. Thus, the lead (which is an EP toxic metal and a listed constituent of the petitioned waste) in the waste is evaluated for its potential impacts upon the environment. The Agency also wishes to note that the VHS evaluation also indicated the potential of the waste to leach excessive amounts of cadmium, arsenic, and selenium. This evaluation is not altered by the commenter's indication that the actual waste generation rate is about 10,500 tons per year (rather than 14,500 tons as shown in the petition).

The commenter has also mistakenly assumed that the compliance-point concentration calculated for the waste is a ceiling limit for acceptable EP leachate concentrations of metals. This is not correct; the compliance point is part of the VHS model scenario. The actual ceiling for EP leachate concentrations in the waste would be set by multiplying the regulatory standard for a constituent by the dilution factor assigned by the VHS model for that volume of waste: For example, the upper limit for lead would be 0.315 mg/l in the EP leachate (0.05 mg/l×6.30908).

The commenter has also provided the Agency with information indicating that the Pennsylvania Department of Environmental Resources granted a final exclusion under its authorized State RCRA program. (See Determination of Nonapplicability Order from the State of Pennsylvania, dated October 4, 1984.) The Agency recognizes that General Battery was granted a final exclusion from an authorized State RCRA program. The final State decision does not cover any activity that would bring the waste under Federal jurisdiction (i.e., interstate transport or use of interstate carriers).

C. Final Decision

The Agency recognizes the final exclusion issued by the State of Pennsylvania. Due to the Agency's evaluation of the waste, the petition would be denied if the waste was under Federal jurisdiction. Therefore, the waste must be handled as hazardous if transported in interstate commerce.[7]

III. Kaiser Aluminum

A. Proposed Denial

The Kaiser Aluminum Chemical Corporation (Kaiser) has petitioned the Agency to exclude its wastewater treatment sludge from EPA Hazardous Waste No. F019, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Kaiser, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[8] (See 51 FR 26424–26426, July 23, 1986, for a more detailed explanation of why the Agency proposed to deny Kaiser's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to Kaiser for the waste identified in the petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the vacuum filter sludge generated by Kaiser is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to Kaiser Aluminum Chemical Corporation for its dewatered wastewater treatment sludge (vacuum filter sludge) resulting from conversion coating operations, listed as EPA Hazardous Waste No. F019, which is generated at its Trentwood Works in Spokane, Washington. By this action, the Agency also withdraws the temporary exclusion granted for this waste on December 16, 1981 (see 46 FR 61280).[9]

IV. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the three petitioners included in this notice having their temporary exclusion revoked and final exclusion denied. They would have to revert back to handling their wastes as they did before being granted these exclusions (*i.e.*, they must handle their waste as hazardous). These petitioners would need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of these temporary exclusions and denials would be six months after publication of the final rule in the **Federal Register.**

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal, which would revoke the temporary exclusions and deny the petitions from three facilities is not major. The affect of this proposal would increase the overall costs for these facilities which currently have temporary exclusions that are being revoked and denied. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these three facilities that currently have temporary exclusion and considering a disposal cost of $300/ton, the increased cost to these facilities is approximately $8 million, well under the $100 million level constituting a major regulation. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only effects three facilities. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

(Sec. 3001 RCRA, 42 U.S.C. 6921)

Dated: November 7, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25963 Filed 11–17–86; 8:45 am]

BILLING CODE 6560–50–M

[7] GBC was formally notified in a letter dated November 15, 1985, that the Characterization and Assessment Division would recommend to the Assistant Administrator for Solid Waste and Emergency Response that GBC's petition be denied, and GBC's temporary exclusion be withdrawn. GBC did not exercise its option to withdraw the petition. See 51 FR 26424, n.22, July 23, 1986.

[8] Kaiser was granted a temporary exclusion for this waste on December 16, 1981 (46 FR 61280).

[9] The Agency formally notified Kaiser on January 10, 1986, that it would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Kaiser's petition be denied and that Kaiser's temporary exclusion be withdrawn. Kaiser declined to withdraw its petition. See 51 FR, 26426, n. 30, July 23, 1986.

40 CFR Part 261

[SW-FRL-3113-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Denial

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to deny the petition submitted by one petitioner to exclude their solid waste from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying this petition is that the petitioner has not substantiated their claim that the waste is non-hazardous. The effect of this action is that all of this waste must be handled as hazardous waste in accordance with 40 CFR Parts 262–266, and Parts 270, 271 and 124.

EFFECTIVE DATE: May 18, 1987.

ADDRESS: The public docket for this final petition denial is located in Room S–212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Lori DeRose Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On October 22, 1986, EPA proposed to deny specific wastes generated by several facilities, including McLouth Steel Products Corporation, located in Trenton, Michigan (see 51 FR 37432). The Agency had previously evaluated this petition which is discussed in today's notice. Based on our review at that time, the petitioner was granted a temporary exclusion. Due to changes in the delisting criteria required by the Hazardous and Solid Waste Amendments (HSWA) of 1984, however, this petition has been evaluated both for the factors for which the waste was originally listed, as well as other factors and toxicants which reasonably could cause the waste to be hazardous. Based upon these evaluations, the Agency has determined that the petitioning facility has not substantiated their claims that the waste is non-hazardous. The Agency is, therefore, denying the petition submitted by the petitioning facility and is revoking their temporary exclusion.

The denial made final here is for the following petitioner: McLouth Steel Products Corporation, Trenton, Michigan.

I. McLouth Steel Products Corporation

A. Proposed Denial

McLouth Steel Products Corporation (McLouth) has petitioned the Agency to exclude its dust/sludge from EPA Hazardous Waste No. K061, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by McLouth, however, fails to substantiate its claim that the listed constituents are essentially present in an immobile form.[1] (See 51 FR 37432–37434, October 22, 1986, for a more detailed explanation of why the Agency proposed to deny McLouth's petition.)

B. Agency Response to Public Comments

The Agency received numerous comments from McLouth regarding the proposed denial of their petition. McLouth specifically commented on the following items: (1) Promulgation of the VHS model, (2) classification of the petitioned waste as a hazardous waste, (3) lack of nickel and cyanide standards for the characteristic of EP toxicity, (4) the use of maximum leachable contaminant values/VHS model evaluation, (5) the consideration of parameters including dilution effects of recharge, vertical seepage of leachate, ground water flow rate, and attenuation, and (6) use of EP toxicity data in the VHS model.

McLouth comments that the Agency has "never promulgated the VHS model as a rule" and inappropriately did not consider comments received. Although the Agency did not promulgate the VHS model as a rule the Agency did propose and accept comment on the VHS model and its application to evaluating petitioned wastes on February 26, 1985 (see 50 FR 7882, Appendix I). The Agency published their response to the comments received and finalized the VHS model on November 27, 1985 (see 50 FR 48896–48910). The Agency believes that all comments were adequately addressed with regard to the Agency's intention to use the VHS model to predict potential contamination of the ground water under a reasonable worst-case scenario. This model was not promulgated as a rule since it is one of several approaches to petition review, and the Agency did not want to limit its own (or authorized State's) ability to employ novel review mechanisms.

McLouth commented that the petitioned waste, which is listed under 40 CFR Part 261.32 as a hazardous waste from a specific source, does not meet the criteria for listing set forth under 40 CFR 261.11 and, therefore, should be excluded from regulation as a hazardous waste. The Agency disagrees with McLouth's rationale. Under 40 CFR 261.3, a solid waste that has been listed in 40 CFR 261 Subpart D is a hazardous waste unless it has been excluded under 40 CFR Parts 260.20 and 260.22. McLouth, therefore, must not only demonstrate that the waste does not meet the criteria set forth under 40 CFR 260.20 261.11 but also must address the criteria set forth under 40 CFR 260.20 and 260.22. The Agency further notes that the VHS model evaluation is used specifically to predict reasonable worst-case contaminant levels in nearby hypothetical receptor wells, and even if the listed wastes do not exhibit the characteristics of hazardous waste, the wastes must also pass the VHS model evaluation (*i.e.*, compliance point concentrations generated using EP leachate data as input to the VHS model must be below appropriate regulatory standards) in order to be delisted. McLouth claims it is unreasonable for the Agency to go beyond consideration of the EP toxicity characterization contaminant levels in evaluation of their petition. The Agency has explicitly stated and reiterated that wastes leaching concentrations of the same toxicants at less than 100 times Drinking Water Standard levels (the EP Characteristic) are not necessarily non-hazardous. Rather, such wastes may be listed as hazardous, if pursuant to the criteria for listings contained in 40 CFR 261.11 of the regulations, these lesser concentrations in combination with other factors are deemed to pose substantial present or potential threat to human health and the environment. The EP toxicity characteristic is designed solely to bring non-listed wastes into the hazardous waste management system. It is not used to list or delist wastes. (See 45 FR 33111–33112, May 19, 1980.)

[1] McLouth was granted a temporary exclusion for this waste on May 5, 1982.

McLouth commented that the Agency has not identified maximum nickel and cyanide concentration levels for determining EP toxicity characteristic levels. The Agency realizes that the EP toxicity characteristic levels for nickel and cyanide are not established. The Agency, however, notes that these values need not be established to allow the evaluation of listed constituents or constituents reasonably expected to be present in the waste.

The Agency does not wait for EP toxicity characteristic standards to be established in order to make decisions on delisting petitions. Prior to HSWA, the Agency considered as part of the delisting evaluation all of the listed constituents for a petitioned waste. The listed constituents include cyanide and nickel (which do not have EP toxicity characteristic standards) for wastes such as F006. If the Agency had waited for an EP toxicity characteristic standard to be established, no exclusions would have been granted since 1980 for wastes listed for these constituents. Early on, however, the Agency made a policy decision to process petitions using the best toxicity data available if EP toxicity standards had not been developed. As a result of HSWA, the Agency has been required to consider Appendix VIII hazardous constituents (other than the listed constituents) in petitioned wastes, where there is reasonable basis to expect these constituents to be present. Again in lieu of deferral of decisions, the Agency has used available standards and toxicological data for these additional hazardous constituents. The Agency, therefore, has evaluated nickel and cyanide levels in this waste using the VHS model. McLouth commented that the regulatory standard for cyanide presented in Table 3 of the proposed denial (see 51 FR 37434) was incorrect. The Agency agrees that the regulatory standard for cyanide should have been 0.2 mg/l. The Agency notes, in concurrence with McLouth, that the concentration for cyanide (at the compliance point) does not exceed the Agency's regulatory standard and, therefore, cyanide is not considered to be of regulatory concern.

McLouth has requested the Agency to use a lower waste generation rate than that reported in the petition. McLouth stated that the annual waste volume used in the Agency's evaluation (13,260 cubic yards) does not reflect the actual annual volume. McLouth explained that prior to the submittal of their delisting petition, the annual waste volume was estimated to be 6,000 tons. This volume, however, overestimated the actual annual volume of the petitioned waste because it included quantities of wastes other than the petitioned waste. McLouth also stated that, since the submittal of the petition, the petitioned waste has been segregated from other wastes. McLouth stated that a volume of 2,920 cubic yards more accurately reflects their maximum annual waste volume. The Agency has re-evaluated the information submitted by McLouth and agrees that 2,920 cubic yards should be considered. The Agency, therefore, has re-evaluated the waste using this volume.[2]

McLouth commented that the Agency's use of the maximum leachable contaminant levels in the VHS model does not represent a reasonable worst-case. The Agency recognizes that various parameters such as the mean, median, maximum, and upper confidence limits may, in some cases, be appropriate inputs to the VHS model. Each of these parameters may be used under certain circumstances that are defined by the statistical characteristics of the analytical results. For example, the mean is used when the sample population is large enough and the data exhibit a normal distribution; the median is used when the sample population is large enough and when the data exhibit a log normal distribution. Without any prior assumptions about the statistical distribution of the sample, a non-parametric evaluation of a waste would require approximately 45 samples to achieve a degree of certainty satisfactory to the Agency to allow consideration of alternative statistical values than the maximum.[3] McLouth's analytical results did not meet this sample size criterion for the use of the mean or median, and thus the use of the maximum values was appropriate. McLouth also commented that: (1) Selenium was considered in the VHS model evaluation, however, selenium has never been detected in the extract; and (2) the maximum barium leachate concentration is an outlier.

In response to these comments, the Agency has re-evaluated McLouth's petitioned waste using a maximum annual waste volume equal to 2,920 cubic yards (as previously discussed) and the resulting compliance point concentrations are presented in Table 1. The Agency used the maximum detection limit for selenium in the VHS model evaluation. The Agency realizes, however, that nine other samples displayed non-detect levels of <0.005 ppm. The Agency, therefore, agrees with the commenter that selenium is not present in the waste at levels of regulatory concern.

The leachable barium and cadmium concentrations for 1 of 10 samples were 62.0 and 0.673 ppm, respectively. The barium and cadmium concentrations for the other samples were less than 1 and 0.22 ppm, respectively. The Agency, therefore, agrees with McLouth that the maximum value for barium and also for cadmium are outliers and do not reflect the typical mobility of barium and cadmium in McLouth's waste. The Agency's conclusion is supported by the Dixon Extreme Value Test. The Agency believes that barium and cadmium concentrations of 0.927 and 0.22 ppm, respectively, more accurately reflect the concentration of these constituents in the waste and, therefore, these values were used in the VHS model evaluation.

TABLE 1.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Constituents	Compliance point concentrations	Regulatory standards
As	<0.014	0.05
Ba	.13	1.0
Cd	[1].03	.01
Cr	.014	.05
Pb	[2].33	.05
Hg	.0004	.002
Se	<.014	.01
Ag	.007	.05
Ni	.01	.350
CN	.076	.2

[1] The Agency notes that three of nine samples failed the VHS model evaluation for cadmium.
[2] The Agency notes that four of ten samples failed the VHS model evaluation for lead.

McLouth asserts that disposal facilities common in southeastern Michigan are regulated and approved facilities where one would not expect to find reasonable worst-case situations.

[2] The Agency typically uses maximum annual generation rates or maximum capacities in the VHS model. The Agency has accepted McLouth's explanation that some portion of their wastes has been segregated, however, it is unclear whether the variation from 13,260 to 6000 tons is purely a reflection of the economic climate. The Agency has accepted this explanation in part, because it does not change the Agency's proposed decision to deny. The Agency further notes that the use of a maximum generation rate rather than a maximum capacity in this case is not of precidential significance.

[3] See Morse, M., J. Warren, and W. Sproat, 1986. Sampling and analysis for delisting data verification/delisting spot checks. From Proceedings of the Second U.S. EPA Symposium on Solid Waste Testing and Quality Assurance, July 15–18, 1986. Washington, D.C. (copy provided in public docket for this notice). This paper provides some initial guidance on the factors which the Agency believes may be important in using non-parametric statistical techniques to determine the sample size that will allow the use of values other than the maximum in the VHS model analysis. The Agency intends to publish more formal guidance on this issue in the future.

McLouth further adds that disposal facilities in Michigan are constructed and operated "only where adequate protection of drinking water supplies can be ensured." The petitioner also claims that they would accept an exclusion conditioned on disposal of their waste at a licensed facility. The Agency, to date, has evaluated the immediate and potential hazards of a petitioned waste based on waste characterization information and the assumption that the waste would be managed at a non-regulated facility. The Agency, however, realizes that specific waste management site conditions may provide sufficient protection of the underlying aquifer. The Agency may in the future consider site-specific factors in delistings. At this time, however, the Agency has not developed a strategy for using or evaluating such site-specific factors. If the Agency pursues site-specific delistings, the Agency will need to determine which combination of site-specific factors are needed for various scenarios. The Agency also would need to consider the use of institutional controls (*e.g.*, conditional exclusions) in site-specific delisting evaluations. In particular, the Agency would need to address concerns such as the control or monitoring of on-site and off-site management (and whether a site-specific demonstration will be allowable in either case), controls on waste transportation to ensure that the waste is delivered to the site specified in the petition, and controls to ensure the waste is not removed from the designated management area. The Agency also may consider developing guidelines to provide petitioners with specific information requirements necessary to present a demonstration using site-specific information. The Agency notes that although site-specific delistings are under consideration there is no mechanism at the present time to evaluate demonstrations based on site-specific information.

McLouth claims that past conditional exclusions have been granted based on management conditions placed on the disposal of the waste. Accordingly, McLouth requests the Agency to grant them an exclusion conditioned to dispose their waste at a disposal facility licensed by the Michigan Department of Natural Resources. The Agency currently does not have a mechanism in place to do this. The Agency, however, may consider petitions of this type in the future.

The Agency has addressed several comments and criticisms McLouth has made on the VHS model. The Agency notes that the VHS model was made final on November 27, 1985 (See 50 FR 48886, Appendix), and all comments received on the proposal for the model were incorporated. Generally these comments are no longer entertained by the Agency. They are addressed here, however, due to McLouth's reference in some instances to site-specific factors.

McLouth claims that the Agency has developed and is using a model that "fails to approximate real-world conditions on a reasonable worst-case basis" which subsequently results in an overestimation of contaminant levels (at the compliance point). McLouth comments that dilution effects due to aquifer recharge should be incorporated into the model and further references an approach that addresses the dilution effects of recharge applicable to the VHS model. The Agency notes that dilution effects of recharge and the resulting implications of these effects on the VHS model results are being considered. However, the Agency, at this time, has concerns regarding the time dependent nature of the mixing and subsequent dilution resulting from recharge. Furthermore, recharge should probably be considered to be a site-specific parameter.

McLouth also presented a methodology that considers the effects of vertical seepage of leachate (V_e), an effect which the VHS model assumes is small compared to the ground water flow rate. McLouth concluded in their analysis that the Agency has assumed a uniform depth of contamination beneath the site. The Agency disagrees. The VHS model estimates the depth of penetration (Z) by the equation, $Z=(\alpha_z Y')^{0.5}$ where α_z= vertical dispersivity and Y'=facility width, which results in a parobolic ground water plume. The Agency continues to believe that the effect of V_e is minimal. Intuitively, one would not expect the effect of V_e to be large once the leachate is introduced into the ground water unless the leachate was more dense than the ground water and the plume was a "sinker".

McLouth provided an additional analysis disputing the Agency's assumption that $C_{ep}=C_o$, where C_{ep}=the leachate concentration and C_o=the concentration at the facility boundary. McLouth's derivation uses a site-specific value for V_e which assumes, among other things, a landfill cover permeability of 1×10^{-6} cm/sec. This assumption is not a reasonable worst case assumption that the Agency is prepared to consider. If the Agency establishes a protocol for the evaluation of site-specific factors, this type of assumption, in some cases, may be valid.

McLouth also claims that the Agency's use of a maximum ground water flow rate of 2 meters per year is not representative of the actual aquifers in which ground water wells are situated. The Agency has assumed that this ground water flow rate is a reasonable worst-case flow rate and realizes that this flow rate may not be representative of actual conditions at a particular site if site-specific conditions are to be considered. McLouth also states that the VHS model does not approximate realistic soil conditions because it neglects attenuation which occurs to some extent in all soils. Again, the Agency believes that the use of site-specific information such as ground water flow rate and soil attenuation factors will be more applicable in a site-specific delisting demonstration.

McLouth also challenged the Agency's use of the EP toxicity test. Specifically, McLouth claims that EP toxicity test data cannot provide a scientifically valid estimate of the attenuation of contaminants in a soil-ground water system because when soils are exposed to the extractant of the EP toxicity test procedure (*i.e.*, a buffered acetic acid solution) the soil chemistry will be altered. The Agency disagrees with this claim. The EP toxicity test procedure was developed to simulate the leaching that occurs at a municipal landfill. Therefore, the EP toxicity test is designed to measure, in part, the effect of a slightly acidic leachate (pH=5.0) that may reasonably be percolating through soils beneath a disposal area. The Agency believes that with respect to the pH conditions of the extractant, the EP toxicity test is, in fact, valid in simulating realistic conditions.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the sludge generated by McLouth is hazardous and as such should not be excluded from hazardous waste control. The Agency, therefore, is denying a final exclusion to the McLouth Steel Products Corporation for its sludge) resulting from the primary production of steel in electric furnaces, listed as EPA Hazardous Waste No. K061, which is generated at its Trenton, Michigan facility. By this action, the Agency also withdraws the temporary exclusion granted for this waste on May 5, 1982.

II. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become

effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is not the case, however, for the petitioner included in this notice having their temporary exclusion revoked and final exclusion denied. They will have to revert back to handling their waste as they did before being granted their temporary exclusion (*i.e.*, they must handle their wastes as hazardous). This petitioner will need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of the revocation of this temporary exclusion and denial is six months after publication of the final rule in the Federal Register.

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation, which would revoke a temporary exclusion and deny a petition from one facility, is not major. The affect of this rule would increase the overall costs for the facility which currently has a temporary exclusion that is being revoked and denied. The actual cost to this company, however, would not be significant. In particular, in calculating the amount of waste that is generated by this facility that currently has a temporary exclusion and considering a disposal cost of $300/ton, the increased cost to this facilities is approximately $0.9 million, well under the $100 million level constituting a major regulation.

This rule is not a major regulation; therefore, no Regulatory Impact Analysis is required.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs. This rule only effects one facility. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

(Sec. 3001 RCRA, 42 U.S.C. 6921)

Dated: November 7, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86–25965 Filed 11–17–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6630

[AA–320–07–4220–10; ES 17056]

Minnesota; Withdrawal of Public Lands for Voyageurs National Park

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 49.26 acres of public land comprised of 61 islands and one waterfront lot from surface entry for 20 years in order to facilitate transfer of administrative jurisdiction from the Bureau of Land Management to the National Park Service. These islands will be managed as part of the Voyageurs National Park. The lands are not subject to the United States mining laws, and have been and will remain open to mineral leasing.

EFFECTIVE DATE: November 18, 1986.

FOR FURTHER INFORMATION CONTACT: Joyce Troy, Bureau of Land Management, Eastern States Office, 350 South Pickett St., Alexandria, Virginia 22304, 703–274–0122.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location and entry under the general land laws but not from leasing under mineral leasing laws and are hereby transferred from the Bureau of Land Management to the National Park Service, and henceforth shall be administered as part of the National Park System.

Fourth Principal Meridian, Minnesota

T. 69 N., R. 19 W.,
- Sec. 14, unsurveyed island in SE¼NE¼;
- Sec. 18, Government lot 4;
- Sec. 19, unsurveyed island in SW¼SE¼;
- Sec. 20, unsurveyed island in NW¼SE¼;
- Sec. 23, unsurveyed island in SE¼NW¼;
- Sec. 27, unsurveyed island in NW¼SE¼;
- Sec. 28, unsurveyed island in NE¼NW¼, unsurveyed island in SE¼NW¼;
- Sec. 30, unsurveyed island in NW¼SE¼, unsurveyed island in SE¼NE¼;
- Sec. 31, unsurveyed island in NW¼NW¼.

T. 70 N., R. 19 W.,
- Sec. 28, unsurveyed island in NE¼NE¼, unsurveyed island in NE¼NE¼;
- Sec. 30, unsurveyed island in NW¼SE¼;
- Sec. 33, unsurveyed island in NE¼NE¼;
- Sec. 34, unsurveyed island in SW¼NW¼.

T. 69 N., R. 20 W.,
- Sec. 12, unsurveyed island in SW¼SE¼;
- Sec. 13, unsurveyed island in SW¼NE¼, unsurveyed island in SE¼NE¼;
- Sec. 14, unsurveyed island in SE¼NE¼, unsurveyed island in NE¼SW¼, unsurveyed island in NW¼SW¼;
- Sec. 15, unsurveyed island in SW¼SW¼;
- Sec. 20, unsurveyed island in NE¼NE¼, unsurveyed island in SW¼NW¼, unsurveyed island in NW¼SW¼;
- Sec. 22, unsurveyed island in SE¼NW¼, unsurveyed island in NW¼SW¼;
- Sec. 23, unsurveyed island in SW¼SW¼, unsurveyed island in SW¼SW¼;
- Sec. 25, unsurveyed island in NE¼NE¼;
- Sec. 26, unsurveyed island in SW¼NE¼, unsurveyed island in SE¼NW¼.

T. 70 N., R. 20 W.,
- Sec. 34, unsurveyed island in NE¼SW¼;
- Sec. 35, unsurveyed island in NW¼SE¼.

T. 69 N., R. 21 W.,
- Sec. 3, unsurveyed island in NE¼NE¼, unsurveyed island in NE¼NE¼, unsurveyed island in SW¼NW¼, unsurveyed island in SW¼NW¼;
- Sec. 4, unsurveyed island in NW¼SW¼;
- Sec. 9, unsurveyed island in SW¼SW¼, unsurveyed island in NE¼SE¼;
- Sec. 10, unsurveyed island in NE¼NW¼, unsurveyed island in NE¼NW¼, unsurveyed island in SE¼NW¼, unsurveyed island in NE¼SW¼;
- Sec. 12, unsurveyed island in NW¼SE¼;
- Sec. 13, unsurveyed island in NE¼NE¼, unsurveyed island in NW¼SW¼;
- Sec. 14, unsurveyed island in NW¼NE¼ unsurveyed island in NW¼NE¼
- Sec. 21, unsurveyed island in NW¼NW¼;
- Sec. 23, unsurveyed island in NW¼SE¼, unsurveyed island in SW¼SE¼;
- Sec. 25, unsurveyed island in SW¼NE¼.

T. 70 N., R. 21 W.,
- Sec. 28, unsurveyed island in SE¼SW¼;
- Sec. 30, unsurveyed island in SW¼NE¼, unsurveyed island in SW¼SE¼;
- Sec. 32, unsurveyed island in NW¼SW¼;
- Sec. 33, unsurveyed island in SE¼NW¼, unsurveyed island in SW¼SE¼;
- Sec. 34, unsurveyed island in SW¼NW¼.

The area described aggregates approximately 49.26 acres in St. Louis County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit,

or governing the disposal of their mineral or vegetative resources.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

4. The above described lands shall be administered by the Secretary of the Interior, through the National Park Service, in accordance with the provisions of the Act of August 25, 1916, 39 Stat. 535, as amended.

November 6, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86-25927 Filed 11-17-86; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 73

[MM Docket 86-264; FCC 86-484]

Broadcast Services; Modifications of Broadcast Transmitters

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This decision deregulates certain rules regarding broadcaster transmitter equipment and mechanical modifications. In particular, the proceeding considers the requirement that certain electrical and mechanical broadcast transmitter modifications require submission of an FCC Form 301 and Commission approval before the modification can be performed. The action is needed to reduce burdens on the public and to allow licensees maximum flexibility without increasing harmful interference.

EFFECTIVE DATE: December 12, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Lewis, Policy and Rules Division, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order (Report)* in MM Docket 86-264, adopted, October 24, 1986, and released November 4, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. The *Report and Order* in this proceeding eliminates the requirement that broadcast licensees need FCC approval before performing electrical and mechanical modifications to their transmitting equipment. The *Notice of Proposed Rule Making* in this proceeding proposed to permit licensees to modify their equipment without approval providing that equipment tests are performed immediately upon completion. The proposed test were those necessary for communications equipment to receive the FCC grants of type acceptance or notification. It was also proposed that the results of these tests would be retained for as long as the modified equipment is used.

2. In response to commenters concerns that the proposed tests would be expensive and time-consuming, the Commission instead adopted a requirement that traditional equipment performance measurements pertaining to measurement of spurious emissions be made subsequent to the modification. Thc results must be retained for two years. Also, a simple and brief description of the modification must be retained at the transmitter site. The Commission also reversed its position regarding AM stereo conversions. The Commission agreed with commenters that this modification should be permitted under the scope of these new rules. Therefore, any electrical or mechanical modification to transmitting equipment will be governed by these new relaxed procedures.

Regulatory Flexibility Information

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 603, a Final Regulatory Flexibility Analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

4. The Secretary shall cause a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seg.*), (1981).

Paperwork Reduction Act Statement

5. The *Report and Order* contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the information collection burden which the Commission imposes on the public. This reduction in information collection burden is subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

6. Accordingly, It Is Ordered, That pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934 as amended, that Parts 2 and 73 of the Commission's Rules Are Amended effective December 12, 1986.

7. It Is Further Ordered That this proceeding Is Terminated.

List of Subjects

47 CFR Part 2

Communications equipment radio.

47 CFR Part 73

Radio broadcasting, Television broadcasting.

Amendatory Text

Title 47 CFR Parts 2 and 73 are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Parts 2 and 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 2.977 is amended by adding new paragraph (d) to read as follows:

§ 2.977 Changes in notified equipment.

* * * * *

(d) Notwithstanding the provisions of this section, broadcast licensees or permittees are permitted to modify notified transmitters pursuant to § 73.1690 of the FCC's Rules.

3. 47 CFR 2.1001 is amended by adding new paragraph (l) to read as follows:

§ 2.1001 Changes in type accepted equipment.

* * * * *

(l) Notwithstanding the provisions of this section, broadcast licensees or permittees are permitted to modify type accepted equipment pursuant to § 73.1690 of the FCC's Rules.

PART 73—RADIO BROADCAST SERVICES

4. 47 CFR 73.127 is amended by revising paragraph (f) to read as follows:

§ 73.127 Use of multiplex transmission.

* * * * *

(f) Installation of the multiplex transmitting equipment must conform with the requirements of §73.1690(e).

5. 47 CFR 73.1225 is amended by revising paragraphs (c) and (d) in their entirety to read as follows:

§ 73.1225 Station inspections by FCC.

* * * * *

(c) The following records shall be made available by all broadcast stations upon request by representatives of the FCC.

(1) Equipment performance measurements required by §§ 73.1590 and 73.1690.

(2) The written designations for chief operators and, when applicable, the contracts for chief operators engaged on a contract basis.

(3) Application for modification of the transmission system made pursuant to § 73.1690(c).

(4) Informal statements or drawings depicting any transmitter modification made pursuant to § 73.1690(e).

(5) Station logs and special technical records.

(d) Commercial and noncommercial AM stations must make the following information also available upon request by representatives of the FCC.

(1) Copy of the most recent antenna or common-point impedance measurements.

(2) Copy of the most recent field strength measurements made to establish performance of directional antennas required by § 73.151.

(3) Copy of the partial directional antenna proofs of performance made in accordance with § 73.154 and made pursuant to the following requirements:

(i) Section 73.68, Sampling systems for antenna monitors.

(ii) Section 73.69, Antenna monitors.

(iii) Section 73.61, AM directional antenna field strength and proof of performance measurements.

6. 47 CFR 73.1660 is amended by revising paragraphs (b) and (d) to read as follows:

§ 73.1660 Acceptability of broadcast transmitters.

* * * * *

(b) A permittee or licensee planning to install and use as a main transmitter one not included on the FCC's "Radio Equipment List" must obtain authority to use such a transmitter by filing for a construction permit on FCC Form 301 (FCC Form 340 for noncommercial educational stations). The application must include a complete description and circuit diagram of the transmitter, description of the carrier frequency determining circuits, complete operating parameters, and measurement data as would be required for a grant of type acceptance. A permittee or licensee planning to modify a transmitter which is included on the FCC's "Radio Equipment List" or for which an FCC Form 301 has been submitted and approved, must follow the requirements contained in § 73.1690.

* * * * *

(d) AM stereophonic exciter-generators for interfacing with type accepted or notified AM transmitters may be type accepted upon request from any manufacturer by the procedures described in Part 2 of the FCC Rules. Broadcast licensees may modify their type accepted AM stereophonic exciter-generators in accordance with § 73.1690.

* * * * *

17. 47 CFR 73.1690 is amended by revising paragraph (e), by removing paragraphs (b)(1), (b)(2), and by redesignating paragraphs (b)(3), (b)(4), and (b)(5) as (b)(1), (b)(2), and (b)(3) respectively to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(e) Any electrical and mechanical modification to authorized transmitting equipment that is not otherwise restricted by the preceeding provisions of this section, may be made without FCC notification or authorization. Equipment performance measurements must be made within ten days after completing the modifications (See § 73.1590). An informal statement, diagram, etc. describing the modification must be retained at the transmitter site for as long as the equipment is in use.

William J. Tricarico,

Secretary.

[FR Doc. 86-25732 Filed 11-17-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 94

[PR Docket No. 86-126; RM-5202; FCC 86-485]

Amendment of Rules Governing Private Operational-Fixed Microwave Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order amending the rules in Part 94 which govern the Private Operational-Fixed Microwave Service (OFS). The rule section requiring the submission of frequency engineering analyses (47 CFR 94.15) is amended to require OFS applicants to furnish information regarding the system's transmitter and antennas to the entity performing its frequency engineering analysis. Further, the rule is amended to require frequency engineering analyses to include consideration of the technical characteristics of the transmitting equipment that an applicant proposes to use, as indicated by the FCC ID number of the transmitter and the make and model numbers for all antennas. This action is taken to improve the efficiency of microwave frequency engineering analyses.

EFFECTIVE DATE: December 15, 1986.

FOR FURTHER INFORMATION CONTACT: Harold Salters, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632-7597.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 86-126, adopted October 24, 1986, and released November 6, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On April 14, 1986, the FCC released a Notice of Proposed Rule Making (Notice) in PR Docket No. 86-126 (summary published at 51 FR 15355, April 23, 1986) proposing amendments to Part 94 of its rules governing the Private Operational-Fixed Microwave Service (OFS). The Notice was issued in response to a petition for rule making, RM-5202, filed by the Harris Corporation—Farinon Division (Harris).

2. Harris' petition requested that OFS applicants be required to provide the FCC ID number assigned to transmitting equipment and the make and model numbers of the proposed system's antennas as part of the frequency engineering analysis required by § 94.15(b) of the Commission's rules. Applicants for new or modified OFS facilities are required to submit a frequency engineering analysis of the potential interference that their proposed facilities may cause to previously-authorized and applied-for stations.

3. The June 1982 version of the FCC Form 402, Application for a License in the Private Operational-Fixed Microwave Radio Service, required applicants to provide the microwave

transmitter's FCC ID number and the make and model numbers of the antennas. However, in August 1985, to reduce the public's paperwork burden and make more efficient use of the Commission's limited staff resources, the Commission revised Form 402 to remove data elements that were not critical to the staff's processing of applications. Among the data elements removed were the transmitter's FCC ID number and the make and model numbers of the antennas.

4. In consideration of the Harris petition, the Notice proposed to require applicants to furnish this transmitter and antenna information to the frequency engineering firm or other entity performing the required frequency engineering analysis. Additionally, recognizing the value of this information to the microwave frequency engineering process, we proposed adding language to the rule section requiring frequency engineering analyses (47 CFR 94.15(b)) to include consideration of the technical characteristics of the transmitting equipment that an applicant proposes to use, including the FCC ID number of the transmitter and the make and model numbers for all antennas the applicant proposes to use.

5. Commenters concurred in the Notice's objectives, although some urged us to go further and maintain this information in our microwave license data base. However, we believe that our amended rule, in conjunction with the existing requirements contained in § 94.15, will assure that all interested parties have access to necessary information. Section 94.15(b) requires that OFS applicants and licensees cooperate fully in the exchange of technical information necessary to performing frequency engineering analysis.

6. The Commission noted that it does not require the subject transmitter and antenna information for OFS application processing since the revised Form 402 requires the specific transmitter and antenna information necessary for us to determine the overall interference potential of an applicant's system. Further, any change in a transmitter or antenna that may impact the system's overall interference potential is brought to the attention of the Commission and the public by the requirement that modification applications be submitted and placed on public notice in specified situations.

Regulatory Flexibility Analysis

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 605, the Commission certified that the amended rule will not have a significant economic impact on a substantial number of small entities. Therefore, there is no requirement for a final regulatory flexibility analysis.

Paperwork Reduction

8. The rule amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clause

9. Accordingly, it is ordered, that effective December 15, 1986, Part 94 of the Commission's Rules, 47 CFR Part 94, is amended as shown at the end of this document. Authority for this action is found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303. It is further ordered, that this proceeding is terminated.

List of Subjects in 47 CFR Part 94

Private operational-fixed microwave service, Radio.

Part 94 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

The authority citation for Part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

In § 94.15, paragraph (b) is revised to read as follows:

§ 94.15 Policy governing the assigment of frequencies.

* * * * *

(b) All applications for new or modified stations must contain an engineering analysis of the potential interference between the proposed facilities and previously authorized facilities and pending applications. The application must contain as supplemental information:

(1) A certification that based upon frequency engineering analysis, the potential interference will not exceed that prescribed by the interference criteria in § 94.63; or

(2) If the potential interference will exceed that prescribed by § 94.63, a statement to the effect that all parties affected have agreed to accept the higher level of interference.

(3) In either case, the application must contain the names of the licensees and the call signs of the stations that were considered in conducting the engineering analysis. Further, applicants and licensees will be expected to cooperate promptly and fully in the exchange of technical information necessary to performing frequency engineering analysis and, in the event of technical differences, cooperate in resolving these differences. Engineering analyses prepared pursuant to this section shall include consideration of the technical characteristics of the transmitting equipment that an applicant proposes to use, including the FCC ID number of the transmitter and the make and model numbers for all antennas the applicant proposes to use. Applicants shall provide this information to the entities responsible for performing the frequency engineering analysis.

* * * * *

William J. Tricarico,

Secretary.

[FR Doc. 86-25998 Filed 11-17-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 85-196; DA 86-152]

Amateur Radio Service; Volunteer-Examiner Coordinators (VEC's); Maintenance of Pools of Questions for Amateur Operator Examinations

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The effective date of the Final Rule adopted in this proceeding, 51 FR 30645, August 28, 1986, was contingent upon approval of certain collection and record keeping requirements by the Office of Management and Budget. Such approval has now been received. Therefore, members of the public are notified that the rule amendments will become effective on the date shown below.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

November 10, 1986.

Public Notice

(Reissued)

Maintenance of Question Pools for Amateur Operator Examinations Transferred to VEC's—Rules To Become Effective

On August 4, 1986, the FCC adopted a Report and Order (FCC 86-343) in PR Docket No. 85-196 which transferred the maintenance of question pools for amateur operator examinations to the Volunteer Examiner Coordinators (VEC's). A written summary of this action was published in the **Federal Register** on August 28, 1986, 51 FR 30645.

Implementation of the information collection and record keeping requirements incident to the transfer of the question pools was contingent upon approval by the Office of Management and Budget (OMB). Approval has been received and the rules adopted in the proceeding may now become effective. Therefore, effective December 31, 1986, Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as set forth in the Appendix attached to the Report and Order in PR Docket No. 85-196.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-25997 Filed 11-17-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. 27; Amdt. 71-21]

Standard Time Zone Boundaries

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule incorporates a recent Public Law that changed the beginning of Daylight Saving Time to the first Sunday in April. Previously, Daylight Saving Time began the last Sunday in April. In addition, the rule makes a minor editorial correction to reflect the current names of time zones.

DATE: This rule is effective November 18, 1986.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel (C-50), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590; (202) 366-9306.

SUPPLEMENTARY INFORMATION: Under the Uniform Time Act of 1966, as amended, the beginning and ending dates of Daylight Saving Time are set by Federal statute. Since 1966, Daylight Saving Time has begun at 2:00 a.m. the last Sunday in April, and ended at 2:00 a.m. the last Sunday in October. On July 8, 1986, President Reagan signed Pub. L. 99-359. Among other things, that Act moved the beginning of Daylight Saving Time up three weeks to the first Sunday in April. No change was made to the ending date. For example, Daylight Saving Time will begin in 1987 on April 5 and end on October 25. This change will only affect those States that choose to observe Daylight Saving Time. Section 71.2 is amended to make this change and is partially rewritten for clarity. The authority citation is also amended to reflect the new Public Law.

This rule also makes an editorial correction to § 71.1. In a 1983 final rule [48 FR 43281, September 22, 1983] the Department changed the names of the Yukon, Alaska-Hawaii, and Bering time zones to the Alaska, Hawaii-Aleutian and Samoa time zones. These new time zone names were inadvertently left out of § 71.1 in the 1983 rule but are corrected by this final rule.

Since this amendment merely incorporates a statutory change and makes a minor editorial correction, notice and comment on it are unnecessary and it may be made effective in less than thirty days after publication in the **Federal Register.**

Regulatory Requirements

I find that, under the criteria of the Regulatory Flexibility Act, this rule will not have a significant effect on a substantial number of small entities. Further, it is not a major rule under Executive Order 12291, nor a significant rule under DOT Regulatory Policies and Procedures. Because this amendment is merely editorial in nature, it does not warrant preparation of a regulatory evaluation. Finally, DOT has determined that this rule is not a major Federal Action significantly affecting the quality of the human environment under the National Environmental Policy Act and therefore that an environmental impact statement is not required.

List of Subjects in 49 CFR Part 71

Time.

PART 71—[AMENDED]

Accordingly, 49 CFR Part 71, *Standard Time Zone Boundaries,* is amended to read as follows:

1. The authority of Part 71 is revised to read:

Authority: Secs. 1-4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2-7, 80 Stat. 107, as amended; 100 Stat. 764; Act of March 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97-449, 15 U.S.C. 260-267; Pub. L. 99-359; 49 CFR 1.59(a).

2. Paragraph (c) of § 71.1 is revised to correct the names of the last three time zones so that it reads:

§ 71.1 Limits defined; exceptions authorized for certain rail operating purposes only.

* * * * *

(c) The time zones established by the Standard Time Act, as amended by the Uniform Time Act of 1966, are Atlantic, eastern, central, mountain, Pacific, Alaska, Hawaii-Aleutian, and Samoa.

3. Paragraph (a) of § 71.2 is revised to read:

§ 71.2 Annual advancement of standard time.

(a) The Uniform Time Act of 1966 [15 U.S.C. 260a(a)], as amended, requires that the standard time of each State observing Daylight Saving Time shall be advanced 1 hour beginning at 2:00 a.m. on the first Sunday in April of each year and ending at 2:00 a.m. on the last Sunday in October. This advanced time shall be the standard time of such zone during such period. The Act authorizes any State to exempt itself from this requirement. States in two or more time zones may exempt the easternmost time zone portion from this requirement.

(b) * * *

Issued in Washington, DC, under authority delegated to me under 49 CFR 1.57(1) on November 10, 1986.

Jim J. Marquez,

General Counsel.

[FR Doc. 86-25854 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. HM-166V; Amdt. Nos. 172-107 and 173-198]

Hazardous Materials; Uranium Hexafluoride

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations to clearly specify certain safety control measures that must be employed before uranium hexafluoride (UF_6) is offered for transportation. RSPA believes this action is necessary to further increase safety in the transportation of UF_6

because of its potential chemical hazard in addition to its radiological hazard.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Michael E. Wangler, Technical Division, Office of Hazardous Materials Transportation, 400 Seventh St. SW., Washington, DC 20590. (202) 366–4545.

SUPPLEMENTARY INFORMATION: On April 11, 1986, the RSPA published a Notice of Proposed Rulemaking (NPRM) (Docket HM–166V, Notice No. 86–2) in the **Federal Register** [51 FR 12529] which requested public comment on the need to amend the Hazardous Materials Regulations (HMR) by adding a new § 173.420 to specify certain safety control measures addressing packaging requirements for fissile and low specific activity (LSA) UF_6.

Eight commenters responded in writing to the Notice. Five of the comments received objected to the wording contained in proposed § 172.420(a)(1) which addresses the cleaning of packagings used for transportation of UF_6. As proposed, § 173.420(a)(1) would require all packagings for UF_6 to be cleaned "before filling" in accordance with Appendix A of American National Standards Institute (ANSI) Standard N14.1–1982. The commenters interpreted this to mean the packagings must be cleaned prior to each shipment. Appendix A of ANSI N14.1–1982, however, applies to the cleaning of new packagings only. Three of the commenters stated the requirement, as proposed would prevent the filling of in-service cylinders containing "heels," a practice "routinely . . . being carried out safely for a number of years." The RSPA agrees, and § 173.420(a)(1) has been reworded to eliminate this ambiguity.

RSPA received a comment from the Department of Energy suggesting that packagings of UF_6 be cleaned in accordance with Appendix A of the ANSI Standard prior to initial filling and at each "hydrostatic recertification." Although this terminology (hydrostatic recertification) is not used in the ANSI Standard, RSPA agrees that thorough cleaning during periodic inspection and retesting will enhance safety and has amended the proposed rule to reflect this position. In response to a comment received concerning the acceptability of methods of cleaning other than that described in Appendix A, revision of the wording contained in the NPRM clarifies RSPA's position that only the procedures prescribed in Appendix A of the ANSI Standard are acceptable for cleaning new packagings and packagings during periodic inspection and test.

Two of the commenters inquired about the acceptability of using the present weight fill limits listed in Table 1 of ANSI N14.1–1982 for determining the maximum quantity of UF_6 allowed in one packaging during transportation. Additionally, one commenter suggested that RSPA specify a density value for UF_6 at 70 °F. to be used when calculating the mass of UF_6 which would occupy 61 percent of the volumetric capacity of the packaging used for its transportation.

The density of UF_6 at a 61 percent volume limit at 70 °F is 317.8 lb/ft^3 as given in Department of Energy Report ORO–651. However, since the percent volumetric fill limit and temperature were specified, designation of a density value was considered to be unnecessary. Additionally, the fill limits for each type of cylinder as specified in ANSI N14.1–1982 are equivalent to 61 percent of the volumetric capacity at 70 °F. Since the rulemaking could not address specific fill limits for each type of cylinder, the specification of a percent of volumetric capacity at a specific temperature was deemed to be the most desirable solution.

Two commenters inquired about the acceptability of using cylinders which were not fabricated in accordance with ANSI N14.1–1982. These cylinders may have been constructed in accordance with an older version of the ANSI Standard or according to other specifications and may or may not conform to DOT Type A packaging standards. Although RSPA believes many of these cylinders will be acceptable for transporting UF_6, a general provision allowing use of all cylinders which fall into one of the above categories can not be justified from a safety standpoint. Therefore, any cylinder not fabricated in accordance with ANSI N14.1–1982 will require an exemption granted under the provisions of Part 107 of the HMR before transportation of UF_6 is authorized.

One respondent questioned the safe transportation of cylinders filled with UF_6 that have been stored for many years. Under the ANSI standard, filled cylinders are excepted from the 5-year hydrostatic test requirement prescribed for packages of UF_6 in ANSI N14.1982. Based upon information concerning the physical, chemical, and radiological properties of UF_6, RSPA believes that this compound, when properly packaged, is not materially affected by lengthy delays between shipments. Therefore, there should be no effective change to the contents of the packaging, provided that the requirements of 49 CFR 173.420(a) continue to be met.

Shippers of UF_6 are reminded that in addition to the specific shipping requirements stated herein, all shipments of UF_6 are subject to the standard requirements for all packages (§ 173.24) and the quality control requirements for shipments of radioactive materials (§ 173.475).

Several comments expressed concern over the use in the NPRM of the term "packaging" rather than "cylinder" for containment devices for UF_6. However, because these packagings are not fabricated in accordance with a DOT cylinder specification, use of the term "cylinder" is not appropriate. In addition because the containers described in the ANSI Standard may be transported without additional packing or overpack, the requirements in 49 CFR 173.403 for a "packaging" are satisfied.

RSPA received one comment which stated the volumetric and pressure limitations proposed in the NPRM should be changed to "63.4% at 70 °F" and "less than 10 psia at 70 °F," respectively. RSPA disagrees. The limitations proposed in the NPRM (i.e., 61% and 14.7 psia) were taken from the ANSI Standard and U.S. Department of Energy Report ORO–651. The commenter failed to provide a technical basis for the proposed changes, and, without supporting data, deviation from acceptable industry standards as adopted in this amendment is not justified.

One commenter suggested the marking requirements prescribed under the ANSI Standard be incorporated into the final rule. RSPA agrees and has included a provision for compliance with the marking requirements established under ANSI N14.1–1982 to provide accurate information concerning the packaging's specification, manufacturer's identification, etc.

One commenter suggested that the "complete package system", the 21PF overpack, be discussed in the final rule. Requirements regarding the 21PF overpack are being addressed in a separate rulemaking under Docket No. HM–190, and are outside the scope of this rulemaking.

Additionally, a reference to § 173.421–2 was inadvertently omitted as one of the applicable requirements identified in the proposed § 173.420(a). This reference has been added. Similarly, the reference to the appropriate applicable section in the column (5)(a) for the entry "uranium hexafluoride, low specific activity" has been changed to refer to § 173.421–2.

In consideration of the comments received, RSPA is adopting the amendments proposed in Notice 86–2, with the following changes:

1. Packagings for UF_6 must be cleaned in accordance with ANSI N14.1–1982 both prior to initial filling and during periodic inspection and test; and

2. Packagings for UF_6 must be marked in accordance with ANSI N14.1–1982 (in addition to the markings already prescribed in the HMR).

Administrative Notices

The RSPA has determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require and environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 et seq.). A regulatory evaluation is available for review in the docket. Based on limited information concerning the size and nature of entities likely affected, I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 172

Hazardous material transportation, Hazardous materials table.

49 CFR Part 173

Hazardous materials transportation, Packaging, Radioactive Materials.

In consideration of the foregoing, 49 CFR Parts 172 and 173 is amended as follows:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1, unless otherwise noted.

§ 172.101 [Amended]

2. In the § 172.101 Hazardous Materials Table:

a. For the entry "Uranium hexafluoride, fissile (containing more than 1% U–235)," the column (5)(b) section reference is revised to read "173.417, 173.420."

b. For the entry "Uranium hexafluoride, low specific activity" the column (5)(a) section reference is revised to read "173.421–2".

c. for the entry "Uranium hexafluoride, low specific activity," the column (5)(b) section reference is revised to read "173.420, 173.425."

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

4. A new § 173.420 is added to read as follows:

§ 173.420 Uranium hexafluoride (fissile and low specific activity).

(a) In addition to any other applicable requirements of this subchapter, uranium hexafluoride, fissile or low specific activity, shall be packaged in conformance with the following requirements:

(1) Before initial filling and during periodic inspection and test, packagings shall be cleaned in accordance with the specific procedures of Appendix A of American National Standard N14.1–1982;

(2) Packagings must be designed, fabricated, inspected, tested and marked in accordance with American National Standard N14.1–1982;

(3) Uranium hexafluoride must be in solid form when offered for transportation;

(4) The volume of the solid uranium hexafluoride at 70° F must not exceed 61% of the volumetric capacity of the packaging; and,

(5) The pressure in the package at 70° F must be less than 14.8 psia.

(b) Packagings of uranium hexafluoride must be periodically inspected, tested and marked in accordance with American National Standard N14.1–1982.

(c) Each repair to a packaging for uranium hexaflouride shall be performed in conformance with American National Standard N14.1–1982.

Issued in Washington, DC on Nov. 10, 1986 under authority delegated in 49 CFR Part 1.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 86–25948 Filed 11–17–86; 8:45 am]

BILLING CODE 4910-60-M

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49 CFR Part 192

[Docket PS–91; Amdt. 192–55]

Pipeline Safety; Interval for Review and Calculation of Relief Device Capacity

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This amendment permits the review and calculation of the capacity of certain relief devices to be made at intervals not exceeding 15 months, but at least once each calendar year. Under the present rule, the review and calculation must be made at intervals not exceeding one-year, a frequency which causes inconvenience in scheduling.

EFFECTIVE DATE: December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Paul J. Cory, (202) 366–4561, regarding the content of this amendment, or the Dockets Branch (202) 366–5046 regarding copies of the amendment or other information in this docket.

SUPPLEMENTARY INFORMATION:

Background

By letter of November 18, 1985, the Gas Piping Technology Committee of the American Society of Mechanical Engineers petitioned RSPA to amend § 192.743(b) to permit the review and calculation of relieving device capacity to be made at the same interval permitted for the testing of relieving devices under § 192.743(a) (Petition No. P–31).

The petition points out that the reviewing and calculation permitted by § 192.743(b), "at intervals not exceeding one-year," is an alternative to the testing of pressure relief devices (except rupture discs) required by § 192.743(a) in situations where the test is not feasible. Under § 192.743(a) testing is required "at intervals not exceeding 15 months, but at least once each calendar year." Thus, the petition explains that operators are required to keep separate maintenance schedules for relief devices depending on whether they are feasible to test. Separate schedules have no apparent safety benefit but add inconvenience to scheduling.

RSPA's review of the petition found the proposal justified. Therefore, a Notice of Proposed Rulemaking (NPRM) (51 FR 21939, June 17, 1986) was published proposing to amend the interval for review and calculation of the required capacity of each relieving device at each station under § 192.743(b) by replacing the words "at intervals not exceeding one year" with "at intervals not exceeding 15 months but at least one each calendar year." As a separate matter, RSPA noted in the preamble of the NPRM that recalculation of relief capacity is not necessary when the review documents that prior calculation parameters have not changed to make current capacity inadequate.

Comments Favoring the NPRM

Twenty-five commenters responded to the NPRM: 2 trade associations, 20 pipeline operators, and 3 State regulatory agencies. All but one commenter agreed with amending § 192.743(b) as proposed.

Four of the commenters who favored the amendment also wanted the wording of the final regulation modified to state the conditions under which capacity need not be recalculated, as RSPA discussed in the preamble of the NPRM. This suggestion would clarify the intent of the existing requirement and is adopted in the final rule.

One of the commenters who favored the proposal made further recommendations for modification of § 192.743 that were outside the scope of the NPRM but which RSPA will consider in future regulatory review activities.

Comment Opposing the NPRM

One commenter objected to the proposed change as a "frivolous and unnecessary relaxation in safety code requirements." This commenter argued that the 15-month interval in the testing rule was provided primarily to allow for scheduling problems in running field tests and that similar problems do not arise in performing the alternative review and calculation in an office. This commenter further stated that the shorter interval for review and calculation is not an undue burden since if testing is not done, the alternative review and calculation should be done as soon as possible to provide for any needed increase in relieving capacity.

RSPA does not believe this commenter raised a substantial safety issue, since the proposal would merely place the interval for review and calculation on par with the interval now allowed for testing. As testing is the primary safety requirement (review and calculation may be done only when testing is not feasible), equating the two intervals should have no adverse effect on safety. Also, while RSPA agrees that safety should be achieved as soon as possible, the timing of an action must be considered in light of all the circumstances. In this case, requiring faster action for one safety alternative than the other creates compliance difficulties that do not appear to be offset by any demonstrable safety benefit.

Advisory Committee Review

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), requires that each proposed amendment to a safety standard established under this statute be submitted to a 15-member advisory committee for its consideration. The Technical Pipeline Safety Standards Committee, composed of persons knowledgeable about transportation of gas by pipeline, considered the proposed amendment to § 192.743(b) in a meeting on June 10, 1986, at Washington, DC. The Committee found the proposed amendment to be technically feasible, reasonable, and practicable.

Classification

This final rule is considered to be nonmajor under Executive Order 12291 and is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. The rule merely provides flexibility in the frequency for review and calculation of capacity of relief devices as an alternative to actual testing.

Since the impact of this final rule is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Relief device, Testing, Pipeline safety.

PART 192—[AMENDED]

In view of the foregoing, RSPA amends 49 CFR Part 192 as follows:

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 1672; 49 U.S.C. 1804; 49 CFR 1.53 and Appendix A of Part 1.

2. Section 192.743(b) is revised to read as follows.

192.743 Pressure limiting and regulating stations: Testing of relief devices.

* * * * *

(b) If a test is not feasible, review and calculation of the required capacity of the relieving device at each station must be made at intervals not exceeding 15 months, but at least once each calendar year, and these required capacities compared with the rated or experimentally determined relieving capacity of the device for the operating conditions under which it works. After the initial calculations, subsequent calculations are not required if the review documents that parameters have not changed in a manner which would cause the capacity to be less than required.

* * * * *

Issued in Washington, DC, November 13, 1986.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 86-25946 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-60-M

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49 CFR Part 192

[Docket No. PS-92; Amdt. 192-54]

Transportation of Natural and Other Gas by Pipeline; Exceptions from Nondestructive Testing of Welds in Transmission Line Repair

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies an existing rule concerning nondestructive testing of non-strength tested girth welds made in the replacement of damaged transmission lines segments. The amendment clarifies that these girth welds qualify for the same exceptions from testing as now apply to girth welds that are strength tested or are made in the replacement of pipe in transmission lines for reasons other than repair. The effect of the amendment should be to reduce repair costs and speed completion of repairs in transmission lines.

EFFECTIVE DATE: This final rule takes effect December 18, 1986.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366-2392.

SUPPLEMENTARY INFORMATION: Part 192 contains two rules that govern the nondestructive testing of girth welds made when a segment of transmission line is repaired by replacing damaged pipe. One, § 192.719(a)(2), which is directed specifically to transmission line repair, requires that "all field girth butt welds that are not strength tested must be tested after installation by nondestructive tests meeting the requirements of § 192.243." Section 192.243 sets forth procedures for nondestructive testing and percentages of welds that must be tested. The other, more general rule, § 192.214(b), requires, with certain exceptions, that all newly made girth welds in steel pipelines which are to operate at a hoop stress of 20 percent or more of specified minimum yield strength (which includes transmission lines) be nondestructively tested in accordance with § 192.243. The excepted girth welds are those that are visually inspected and approved by a qualified inspector, and (1) located in a pipeline that is less than 6 inches in

nominal diameter, or (2) if the welds are so limited in number that nondestructive testing is impractical, located in a pipeline that will be operated at less than 40 percent of SMYS. This general nondestructive testing rule, with its exceptions, applies to girth welds regardless of whether they are strength tested. The rule is also incorporated by reference in § 192.719(b), which governs the nondestructive testing of welds in several transmission line repair methods, including repair by the installation of replacement pipe.

Some operators have interpreted § 192.719(a)(2) to be more restrictive with respect to girth weld testing than § 192.241(b), because on its face it does not provide the exceptions found in § 192.241(b) and it pertains specifically to transmission line repair. By letter of February 7, 1986, the Gas Piping Technology Committee of the American Society of Mechanical Engineers (ASME) petitioned RSPA to exclude from § 192.719(a)(2) the two categories of girth welds that § 192.241(b) excepts from nondestructive testing. The rationale ASME gave for its proposal was that the two exceptions in § 192.241(b) apply to new construction, and there should be "no lessening in safety if they are also applicable to girth welds made during repair." ASME also argued that adding the exceptions would reduce costs where a nondestructive testing crew is not otherwise needed. In addition, ASME pointed out that the latest edition (1982) of the American National Standards Institute B31.8 Code, *Gas Transmission and Distribution Piping Systems,* allows pipeline operators to apply the subject exceptions to nondestructive testing of girth welds made during repair of transmission lines by pipe replacement.

RSPA had previously addressed the matter of the ASME proposal in Interpretation 81–4, dated October 2, 1981. This interpretation, which was set forth in Notice 1 (51 FR 24174, July 2, 1986) of this proceeding, held that the exceptions provided by § 192.241(b) also apply to nondestructive testing required by § 192.719(a)(2).

In view of Interpretation 81–4, the ASME proposal, and the exceptions in the B31.8 Code, RSPA proposed in Notice 1 to amend § 192.719(a)(2) by deleting the existing reference to "§ 192.243" and adding in its place "§ 192.241(b)", and by making associated editorial changes.

Sixteen persons submitted comments on the notice of proposed rulemaking (2 trade associations and 14 gas companies), and each one supported the concept of the proposal.

Two commenters, however, pointed out that if § 192.719 were amended as set out in the notice, a dual reference to the nondestructive testing standards of § 192.241 would be created (through the proposed § 192.719(a)(2) and the existing § 192.719(b)) that could be confusing. The proposed § 192.719(a)(2) reference would apply to girth welds that are *not* strength tested, while the § 192.719(b) reference applies to these welds as well as those that *are* strength tested. RSPA agrees with the two commenters that adding the reference to § 192.241(b) in § 192.719(a)(2) would create an unintended implication that non-strength tested grith welds are to be treated differently than those that are strength tested. Further, it appears that the proposed amendment to § 192.719(a)(2) would duplicate requirements of §§ 192.241(b) and 192.719(b) that now apply to non-strength tested girth welds made in the repair of transmission lines, and thus be unnecessary.

In the final rule, therefore, RSPA has revised § 192.719(a) by deleting that portion of paragraph (a)(2) that concerns nondestructive testing and combining the remainder of paragraph (a)(2) with paragraph (a)(1) to form an undivided paragraph (a) dealing with the pressure testing of replacement pipe. The purpose of this rulemaking, which is to clarify that the exceptions from nondestructive testing provided by § 192.241(b) pertain to testing of non-strength tested girth welds used to join replacement pipe in repaired transmission lines, is still achieved, since § 192.241(b) applies to these welds and the reference to § 192.241 in § 192.719(b) includes the § 192.241(b) exceptions.

Advisory Committee Review

The Technical Pipeline Safety Standards Committee, a 15-member advisory committee established under section 4(b) of the National Gas Pipeline Safety Act of 1968, considered the proposed rule at a meeting in Washington, DC on June 10, 1986. The Committee declared the proposed rule to be technically feasible, reasonable, and practicable. A transcript of the Committee's deliberation and a report of its findings are available in the docket for this proceeding.

Classification

Since this final rule will have a positive effect on the economy of less than $100 million a year, will result in cost savings to consumers, industry, and government agencies, and no adverse impacts are anticipated, the rule is not "major" under Executive Order 12291. Also, it is not "significant" under Department of Transportation procedures (44 FR 11034). RSPA believes that the rule will reduce the costs of repairing damaged transmission lines by reducing the number of occasions nondestructive testing is done to comply with the current rule. However, this savings is not expected to be large enough to warrant preparation of a Regulatory Evaluation.

Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Welds, Nondestructive testing, Replacement.

PART 192—[AMENDED]

In consideration of the above, RSPA amends Part 192 of Title 49 of the Code of Federal Regulations as follows:

1. The authority citation for Part 192 continues to read as set forth below:

Authority: 49 U.S.C. 1672 and 1804; 49 CFR 1.53 and Appendix A of Part 1.

2. Section 192.719(a) is revised to read as follows:

§ 192.719 Transmission lines: Testing of repairs.

(a) *Testing of replacement pipe.* If a segment of transmission line is repaired by cutting out the damaged portion of the pipe as a cylinder, the replacement pipe must be tested to the pressure required for a new line installed in the same location. This test may be made on the pipe before it is installed.

* * * * *

Issued in Washington, DC on November 13, 1986

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc 86–25947 Filed 11–17–86; 8:45 am]

BILLING CODE 4910–60–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1058

[Ex Parte No. MC–41]

Identification of Motor Vehicles; Luxury-Type Limousine Passenger Service

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Subsequent to notice (51 FR 28249, August 6, 1986) and comment the Commission is exempting from vehicle identification regulations at 49 CFR Part 1058, vehicles with a capacity of six or fewer passengers when engaged in luxury-type limousine passenger service. Carriers offering and passengers using this type of specialized service have found that the identification of vehicles, formerly required by Part 1058 detracted materially from the exclusive luxury nature of the service. The Commission also is eliminating the unnecessary regulation prohibiting the use of its vehicle identification plates issued prior to 1945. The amendments redesignating § 1058.5 as § 1058.5(a), the addition of a new paragraph (b), and the elimination of § 1058.6 are contained in Appendix A of the decision.

EFFECTIVE DATE: The revised rules are effective on December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Roy M. Wilkins, 202–275–7639.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call 289–4357 (DC Metropolitan area) or toll-free (800) 424–5403.

This action will not significantly affect, either the quality of the human environment or energy conservation. This rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1058

Motor carriers.

Decided: November 7, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

Appendix A

Title 49, Code of Federal Regulations Part 1058, is amended as follows:

PART 1058—IDENTIFICATION OF VEHICLES

1. The authority citation for 49 CFR Part 1058 is revised to read as follows:

Authority: 49 U.S.C. 10922 and 10530; 5 U.S.C. 553.

2. Section 1058.5 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 1058.5 Passenger vehicles.

* * * * *

(b) Sections 1058.1 through 1058.4 shall not apply to limousine-type vehicles with a capacity not to exceed six passengers when engaged in a non-scheduled, charter, luxury-type transportation service for passengers and their baggage.

§ 1058.6 [Removed]

3. Section 1058.6 is removed.

[FR Doc. 86–25971 Filed 11–17–86; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 51, No. 222
Tuesday, November 18, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 435

[Docket No. CAS-RM-79-112-B]

Mandatory Energy Conservation Standards for New Federal Residential Buildings

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of extension of public comment period.

SUMMARY: The Department of Energy (DOE) extends to January 16, 1987, the time for public comment on DOE Notice of Proposed Interim Rule to establish a new Part 435 in Title 10 of the Code of Federal Regulations, Subpart C, entitled "Mandatory Energy Conservation Standards for New Federal Residential Buildings." DOE is developing energy conservation performance standards for new buildings pursuant to Title III of the Energy Conservation and Production Act. DOE, recognizing the complexity of the proposed rule, has determined that it is reasonable to provide the public with additional time for analysis and comment.

DATES: Written comments must be received no later than January 16, 1987, to receive consideration by the Department.

ADDRESSES: All written comments (7 copies) are to be submitted to: Office of Conservation and Renewable Energy, Hearings and Dockets Branch, U.S. Department of Energy, Docket Number CAS-RM-79-112-B, 1000 Independence Avenue, SW., Room 6B-025, Washington, DC 20585, (202) 252-9319.

Copies of the transcripts of the public hearings, the supporting documentation, and the written public comments received may be obtained from the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6020, 9:00 a.m.-4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Jean J. Boulin, Architectural and Engineering Systems, CE-131, U.S. Department of Energy, Room GF-231, 1000 Independence Avenue, SW., Washington, DC 20858, (202) 252-9446.

Paul Cahill, Office of General Counsel, U.S. Department of Energy, Room 6B-144, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-1326.

SUPPLEMENTARY INFORMATION: The Department of Energy announced, on August 20, 1986 (51 FR 29754), the availability of Interim Mandatory Standards for Federal Residential Buildings entitled, "Mandatory Energy Conservation Standards for New Federal Residential Buildings." The Notice of Proposed Rulemaking was intended to solicit public comment on the interim standards. The proposal requires a Federal agency to establish an energy consumption goal for the design of a new Federal Residential Building using the computerized calculation procedure provided in a designated Federal micro-computer program (COSTSAFR-Conservation Optimization Standard for Savings in Federal Residences) and to adopt such procedures as may be necessary to assure that the design of a new Federal residential building is not less energy conserving than the energy consumption goal established for the design.

At the time of publication of the Notice several documents were made available for public review. In addition, on September 23, 1986, an ERRATA Addenda was sent to all those who received the initial supporting documents. The Addenda informed the user of the need for an additional calculation not described in the supporting documents. Several initial comments have expressed considerable delay in analysis due to the difficulty of obtaining an 8087 math co-processor (which is necessary to run the COSTSAFR program), and to an unfamiliarity with analyzing micro-computer programs such as COSTSAFR. Further, other comments have requested the need for a completed sample with calculations of the "COSTSAFR program compliance printout," showing what steps are necessary to use the printout. The Department anticipates this document will be issued as an addenda to the COSTSAFR-User's Manual on about November 25, 1986.

Because of the public interest on the Proposed Interim Mandatory Energy Conservation Standards for New Federal Residential Buildings, the Department has decided to extend the public comment period by 59 days to enable interested persons to provide more in-depth comment on the Standards.

Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth below.

Comments should be labeled both on the envelope and on the comments, "Residential Building Standards [Docket No. CAS-RM-79-112-B]" and must be received by the date indicated in the beginning of this notice, in order to insure full consideration. Seven (7) copies are requested to be submitted. All comments and other relevant information received by the date specified at the beginning of this notice will be considered by DOE before final action is taken on the proposed regulation.

All written comments received on the proposed rule will be available for public inspection at the Freedom of Information Reading Room as provided at the beginning of this notice.

List of Subjects in 10 CFR Part 435

Architects, Building code officials, Buildings, Energy conservation, Energy conservation building performance standards, Engineers, Federal buildings and facilities, Housing, Insulation, Voluntary performance standards.

For the reasons set forth, time for public comment on the above referenced proposed interim rule is extended to January 16, 1987.

Issued in Washington, DC on November 14, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-26109 Filed 11-17-86; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-58-AD]

Airworthiness Directives; Mechanical Products 4001, 4200, 4310, and 8500 Series Circuit Breakers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Mechanical Products, Inc. circuit breakers installed in any aircraft. The proposed AD requires the removal from service of the applicable circuit breakers. This action is prompted by reports of electrical short circuiting within the circuit breakers which may cause loss of essential equipment, an electrical fire, or an electrical shock hazard on aircraft.

DATES: Comments must be received on or before January 8, 1987.

ADDRESSES: Mechanical Products Service Instruction (identified on the back page with the date 10/86), applicable to this AD may be obtained from Mechanical Products, Inc., 1824 River Street, Post Office Box 729, Jackson, Michigan 49204; Telephone (517) 782-0391; or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-58-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Donald P. Michal, FAA, Chicago Aircraft Certification Office, ACE-130C, 2300 East Devon Avenue, Des Plaines, Illinois 60018; Telephone (312) 694-7127.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-58-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

In 1984, a design change was made to certain Mechanical Products 4100, 4200, 4310, and 8500 Series circuit breakers which inadvertently allowed an internal part to be assembled incorrectly, resulting in the possible rotation of the part which can cause a short circuit. Two recent field failures have been reported. One occurred during a pre-installation panel assembly test on a unit which had not been in service, and another failed in an airplane after approximately 250 flight hours and an estimated 200 manual actuations. The later failure caused an electrical arc between the circuit breaker and the airplane mounting panel of sufficient duration to melt the surrounding panel material. To date 33,577 units have been tested by the manufacturer and 79 units (or 0.235%) were found to be incorrectly assembled.

Since the condition described is an unsafe condition which is likely to exist or develop in other Mechanical Products 4001, 4200, 4310, and 8500 Series circuit breakers of the same design, the proposed AD would require inspection for and removal of these circuit breakers from all aircraft. This proposal also would require the return of all applicable circuit breakers to the manufacturer for rework to ensure replacement parts availability.

The FAA has determined that approximately 163,000 circuit breakers of the type described in this AD could be used in commercial aircraft. Of the total 163,000 units, approximately 74,000 units were for civil aircraft customers, and 89,000 units went to distributors and have unknown destinations. Mechanical Products, Inc. has initiated a recall which has resulted in the return of approximately 34,000 units to date. Thus 129,500 units remain unaccounted for. The estimated time to inspect and replace each unit is 0.5 hours, for an estimated cost, assuming $40 per hour, of $20 per unit or a total cost of $2,580,000. The total cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities using these circuit breakers.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Mechanical Products, Inc.: Applies to the following 4001, 4200, 4310, and 8500 Series circuit breakers:

Mechanical products designation	Military designation	Ampere rating	Date code
4001 Series.	MS22073	1 thru 5	8501 thru 8636.
4200 Series.	MS26574	½ thru 5	8430 thru 8636.
4310-001,-019 Series.	MS3320	1 thru 5	8603 thru 8636.
8500 Series.	(None)	1 thru 5	8514 thru 8636.

This AD does not apply to circuit breakers produced or installed prior to July 23, 1984, (the thirtieth week of 1984), or to circuit breakers which have been inspected by the manufacturer, found free of defect, marked with a white inverted Z or a T painted on the terminal end, and have an additional date code with an "R" prefix.

Note 1: As an aid in identification, the bodies of these circuit breakers are blue or black in color.

Note 2: The date codes listed above are used to identify the year and week of manufacture, i.e., 8430 indicates the thirtieth week of 1984, and 8636 indicates the thirty-sixth week of 1986. These date codes may be found on the top, side, or bottom of the circuit breakers.

Note 3: As an example the unit may have the additional date code of R8642, where "R" designates a retest by Mechanical Products, 86 indicates the year 1986, and 42 indicates the 42nd week of 1986.

Compliance: Required within six months after the effective date of this AD, unless already accomplished.

To prevent possible loss of essential equipment, electrical fire, or electrical shock hazard on aircraft, accomplish the following:

(a) Visually inspect for installation in aircraft of any of the applicable circuit breakers in accordance with the instructions contained in Mechanical Products Service Instruction (identification on the back page with the date 10/86) and prior to further flight remove all units from service. Applicable aircraft records may be a source of information in complying with the requirements of this AD.

(b) Return all affected circuit breakers to Mechanical Products, Inc., 1824 River Street, Post Office Box 729, Jackson, Michigan 49204.

(c) Aircraft may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(d) An adjustment to the compliance time or an equivalent means of compliance with this AD may be used if approved by the Manager, Chicago Aircraft Certification Office, ACE-115C, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Mechanical Products, Inc., 1824 River Street, Post Office Box 729, Jackson, Michigan 49204; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 7, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-25921 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-3-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 612]

Old Mission Peninsula Viticultural Area; Michigan

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), is considering the establishment of a viticultural area in Grand Traverse County, Michigan, to be known as "Old Mission Peninsula." The proposed viticultural area is located in the northwestern portion of the state's lower peninsula. The petition was submitted by a winery located in the proposed area. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. The establishment of viticultural areas allows wineries to further specify the origin of wines they offer for sale to the public.

DATES: Written comments must be received by January 2, 1987.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC, 20044-0385.

(Notice No. 612).

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4406, Ariel Rios Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revised regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

AFT has received a petition proposing a viticultural area encompassing the narrow peninsula above Traverse City, Michigan. The proposed viticultural area is to be known as "Old Mission Peninsula." The petition was submitted by Edward O'Keefe, President of the Chateau Grand Traverse Winery, the only winery located in the proposed viticultural area. The proposed area consists of all the land in Peninsula Township (excluding Marion and Bassett Islands). It also includes a small portion of Traverse City Township. This peninsula is a sliver of land that juts out into Grand Traverse Bay, forming on its east side, the East Arm of Grand Traverse Bay and on its west side the West Arm of Grand Traverse Bay. The proposed viticultural area is approximately 19 miles long and no more than 3 miles wide at any point. The total area encompassed by the proposed boundaries consists of 181 square miles (101,440 acres) of land.

There are 50 acres of vinifera vineyards for wine production located in the proposed viticultural area with 31 more acres planned by 1989. The proposed area if approved as an American viticultural area will be one of Michigan's four recognized grape-growing regions. Leelanau Peninsula located nearby to the west (across Grand Traverse Bay) is one of them.

Evidence of Name

The petitioner claimed that the petitioned area is known as Old Mission Peninsula. He submitted historical documentation to support this statement. According to the book titled *Michigan History* by Virgil J. Vogel, the French voyagers who paddled southward on Lake Michigan from the Straits of Mackinac saw two indentations on the eastern shore. In crossing the bays from one headland to another, they called the smaller one La Petite Traverse (Old Mission Peninsula) and the larger La Grande Traverse (Leelanau Peninsula). Grand Traverse Bay is divided by Old Mission Peninsula, at the foot of which, is Traverse City.

According to documentation submitted by the petitioner, the settlement of the proposed viticultural area was begun by Reverend Peter Dougherty, who founded the first Indian school on the northeast shores of Old Mission Peninsula, at Mission Harbor. After the school was abandoned in 1952 a new school called "New Mission" was established in an area to the west, now known as Leelanau Peninsula (Leelanau County). From that time on, the old school became known as "Old Mission." At the same time the entire peninsula where the old school was situated became known as "Old Mission Peninsula." Today, this narrow strip of land is still referred to as "Old Mission Peninsula."

According to Leon D. Adams in *The Wines of America*, the Chateau Grand Traverse Winery was the first winery in recent history to plant vines and construct a winery on the Old Mission Peninsula.

Historical or Current Evidence That the Proposed Boundaries of the Viticultural Area Are Correct

The proposed Old Mission Peninsula viticultural area is bounded on three sides by the waters of Grand Traverse Bay, and connected on the south by the mainland of Michigan's lower peninsula, at Traverse City. The south boundary chosen by the petitioner, the unmarked light-duty road (known locally as Eastern Avenue) bordering on Northwestern Michigan College, although a man-made boundary, coincidentally is the demarcation point between the Old Mission Peninsula and the inland areas of northwestern Michigan's lower peninsula.

Evidence Relating to the Geographic Features Such As Climate, Soil, Elevation, Physical Features, etc., Which Set the Proposed Viticultural Area Apart From the Surrounding Areas

The petitioner furnished information which identified the proposed area as a fruit-growing region (cherries, peaches, plums, apples, berries and grapes) for over 100 years. According to this information, the region is world famous for the production of cherries and other agricultural products. The petitioner claims that Grand Traverse County leads the nation (and world) in cherry production. He claims the majority of those cherries come from Old Mission Peninsula.

In a report titled, *The Grand Traverse County Region* (on the Geological and Industrial Resources of the Counties of Antrim, Grand Traverse, Benzie and Leelanau) published in 1866, it stated that grapes thrive throughout the region. The report said that at New Mission (Old Mission Peninsula), Isabella and Catawba grapes were growing. In recent years there has been a revival in interest in grape-growing for commercial purposes in the proposed viticultural area. The one bonded winery in the proposed viticultural area was established in 1975. The petitioner claims the peninsula is isolated and distinguishable from the surrounding area by virtue of natural boundaries and unique geographical features.

Climate

According to the petitioner a climatic heritage of favorable summer and winter climate caused by the moderating influence of Lake Michigan is most pronounced in the Grand Traverse Region (as previously described this area includes Old Mission Peninsula, Leelanau Peninsula and a few surrounding counties). The southwest winds must sweep the whole length of Lake Michigan before crossing the shores of the Grand Traverse Region.

The petitioner enclosed a letter from the Grand Traverse County Cooperative Extension Service detailing the unique features of the proposed Old Mission Peninsula. According to Steven B. Fouch, Extension Agricultural Agent of the Cooperative Extension Service (Michigan State University/U.S. Department of Agriculture), the proximity to Grand Traverse Bay and the southwesterly breezes off Lake Michigan tend to moderate air temperature on the Old Mission Peninsula. This results in mild winters, delayed springs, and relatively cool summers.

Just as Lake Michigan tempers the Grand Traverse Region in general, the surrounding deep waters of the Grand Traverse Bay, coupled with southwesterly winds carrying warmth from the mainland, create a microclimate on the Old Mission Peninsula. The Peninsula, then, is doubly tempered; once from the Lake Michigan effects, and again by the Grand Traverse Bay. This additional insulating effect of the bay is reflected in differences in total degree growing days between Old Mission Peninsula, Traverse City, and Leelanau Peninsula.

Data gathered from a National Weather Service summary for the 15-year period (1962–1976) and for the 2-year period (1980–1981) in western Michigan, was provided by the petitioner. Total growing degree days for Old Mission Peninsula at base 50 (the base temperature used for grapes as well as cherries) averages 2,075 degree days (15 year period), whereas, Traverse City and Leelanau Peninsula average 2,134 degree days over a 2-year period and 2,109 degree days over a 15-year period, respectively. However, even though total growing degree days afforded fruit crops on the Old Mission Peninsula are less in number, they are virtually frost-free, as has been experienced by local fruit growers. In contrast, area frosts have been known to wipe out identical crops in the surrounding Grand Traverse Region, with little or no damage reported on the isolated Old Mission Peninsula. Therefore, temperature variations in both the spring and fall seasons are markedly more moderate on the Old Mission Peninsula than in the immediate surrounding areas.

Soils & Topography

Although not the major distinguishing feature of the proposed Old Mission Peninsula, the soils in the proposed viticultural area vary widely, as is always the case when land is formed by glacial action and deposits. The soil levels consist of granite and limestone bedrock, clay subsoils. The Old Mission Peninsula soil type is of the Leelanau-Kalkaska series, a sandy loam that provides good drainage for fruit crops. According to Mr. Fouch (the Extension Agricultural Agent), the Leelanu-Kalkaska sand loams dominate the soil profile on the peninsula. This well-drained soil has an acidic topsoil and alkaline subsoil.

To contrast, the soils of the Leelanau Peninsula viticultural area located to the west are characterized by large deep inland lakes which add an additional moderating effect to the climate, high rolling and heavily-timbered hills in the north, and undulating plateaus in the south which rise 250 to 400 feet above Lake Michigan.

According to Mr. Fouch, the proposed viticultural area's rolling hills overlook the east and west arms of Grand Traverse Bay and are among the prime fruit sites to be found anywhere. He said that cold spring frosts settle toward the ground and flow off the rolling topography to low areas. He also said fruit is generally much safer from spring frosts on higher elevations in the area.

Based on the petitioner's evidence provided in this notice, it is his opinion, that the proposed Old Missions Peninsula viticultural area defines a region with unique climate and growing conditions different from the surrounding areas.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact nor compliance burdens on a substantial number of small entities.

Compliance With Executive Order 12291

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; and it will not have significant adverse affects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 34, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirements to collect information is proposed.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. The document proposes possible boundaries for the area named "Old Mission Peninsula" viticultural area. However, comments concerning other possible boundaries or names for this viticultural area will be given full consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her requests, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Viticultural areas, Consumer protection, Wine.

Drafting Information

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of 9.114 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * * * *

9.114 Old Mission Peninsula.

Par. 3. Subpart C is amended by adding § 9.114 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.114 Old Mission Peninsula.

(a) *Name.* The name of the viticultural area described in this section is "Old Mission Peninsula."

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the "Old Mission Peninsula" viticultural area are 2 U.S.G.S. Quadrangle (15 Minute Series) maps, scaled at 1:62,500. They are entitled:

(1) Elk Rapids, Mich. (1957); and

(2) Traverse City, Mich. (1957).

(c) *Boundaries.* The boundaries of the proposed Old Mission Peninsula viticultural area are as follows: The boundaries in Grand Traverse County, Michigan, consist of all of Peninsula Township, excluding Marion and Bassett Islands. In addition, the proposed area takes in a small portion of Traverse City Township.

(1) The beginning point is on the Traverse City, Mich., U.S.G.S. map at the shoreline of the West Arm of Grand Traverse Bay at Section 1, (T27N, R11W), approximately 500 feet due west of the intersection of two unmarked light-duty roads (approx. 750 feet north of Bryant Park);

(2) The boundary proceeds north 19 miles along the western shoreline of the Old Mission Peninsula until it reaches the lighthouse near Old Mission Point at the north side of the Peninsula on the Elk Rapids, Mich., U.S.G.S. map, Sec. 23, T30N, R10W;

(3) It then proceeds south for approximately 19 miles along the eastern shoreline of the peninsula to the southeast portion of an unmarked light-duty road (known locally as Eastern Avenue) at Sec. 6, T27N, R10W on the Traverse City, Mich., U.S.G.S. map. The unmarked light-duty road is located immediately north of Northwestern Michigan College on the shoreline of the East Arm of the Grand Traverse Bay;

(4) The boundary travels west along the unmarked light-duty road (known locally as Eastern Avenue) for approx. 1 mile until it meets an unmarked north/south light-duty road at Sec. 1, T27N, R11W; and

(5) Finally, the boundary travels due east 500 feet to the beginning point on the shoreline of the West Arm of the Grand Traverse Bay at Sec. 1, T27N, R11W.

Approved: November 10, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86-25982 Filed 11-17-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD13 85-07]

Anchorage Grounds; Columbia River, OR and WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal by the Port of Portland, Oregon, and other Lower Columbia River ports to expand the existing Lower Columbia River Anchorage Grounds. The proposal seeks enlargement of and a change of names for the Upper and Lower Tongue Point Anchorages near Astoria, Oregon, and establishment of seven new anchorages between Longview, Washington, and Vancouver, Washington. The seven new anchorages are located as follows:

1. Between the Port of Longview docks and the main ship channel;
2. Along Sandy Island across the main ship channel from Kalama, Washington;
3. North of Sand Island across the main ship channel from Columbia City, Oregon;
4. Along Sauvie Island across the main ship channel from Bachelor Point;
5. Across the main ship channel from Sauvie Island near Hewlett Point;
6. Between Kelley Point and the main ship channel; and
7. Along Hayden Island across the main ship channel from the Port of Vancouver.

The ports have asked for this expansion to enhance their ability to efficiently and economically handle existing shipping and to provide sufficient anchorage space to accommodate increases in shipping anticipated over the next 20 years.

In response to the ports' proposal, the Coast Guard Captain of the Port in Portland, Oregon, sponsored a number of meetings of port, terminal, and steamship representatives, local pilot organizations, and other river users including the Northwest Gillnetters Association. Comments received at those meetings led to the development of specific regulations governing utilization and administration of the anchorages which have been incorporated into this Notice of Proposed Rulemaking.

If adopted as final rules, the Coast Guard intends to evaluate utilization of the new anchorages and make changes as necessary to meet the needs of river users.

DATE: Comments must be received on or before January 2, 1987.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office, 6767 North Basin Avenue, Portland, Oregon 97217. The comments and other material referenced in this notice will be available for inspection and copying at 6767 North Basin Avenue, Portland, Oregon, Room 1114, Mt. St. Helens Building. Normal office hours are between 8:00 a.m. and 3:45 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR N.S. PORTER, U.S. Coast Guard Marine Safety Office, 6767 North Basin Avenue, Portland, Oregon 97217, (503) 240-9317.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their name and address, identify this notice (CGD13-85-07) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LT M.P. RAND, USCG, and LCDR N. S. PORTER, USCG, Project Officers, Marine Safety Office Portland, Oregon, and LCDR L.I. KIERN, USCG, Project Attorney, Thirteenth Coast Guard District Legal Office, Seattle, Washington.

Discussion of Proposed Regulations

The existing Lower Columbia River Anchorage Grounds consist of two areas located near the mouth of the river at Astoria, Oregon. Historically, these areas have provided adequate anchorage space for vessels awaiting berth at the Port of Astoria and for vessels awaiting favorable conditions for transit of the Columbia River Bar. They have not, however, provided adequate space for vessels awaiting berth at any of the Columbia's upriver ports nor have they provided an economically practical anchorage area for vessel and facility operators who realize significant cost reductions from having ships anchored near their servicing terminals.

Over the years, the inadequacies of the existing anchorage grounds led vessel operators to anchor their ships in available upriver areas closer to their servicing terminals. Statistics provided by the Port of Portland show that approximately 1,000 such anchorings occurred during the period 1981 to 1983. Current growth projections indicate that this number could double by the year 2000. Although anchoring in this manner has not caused significant navigational problems, it has resulted in occasional conflicts with commercial drift fishing operations.

Prompted by the inadequacies of the existing anchorages and the projections for future growth, the ports of Portland, Astoria, Longview, Kalama, and Vancouver began an analysis of the Lower Columbia River anchorage situation in November, 1983. Their study, which included significant input from the U.S. Army Corps of Engineers, led to submission of a proposal in June, 1984, seeking enlargement of the existing areas and formal designation of eight additional upriver areas. Most of the proposed new anchorages coincided with areas which were already being utilized on an informal, but routine, basis.

In response to the ports' proposal, the Coast Guard Captain of the Port in Portland, Oregon, began a series of meetings with port, terminal, and vessel representatives, river and bar pilots, commercial fishermen, and state fishing authorities. Information presented at those meetings and developed from related studies led to elimination of one of the proposed anchorages and minor alteration of another. Additionally, the meetings led to identification of several public and governmental concerns which required attention if the ports' proposal was to be adopted. Chief among those concerns were the

potential conflicts between ships using the anchorages and commercial fishing operations and the need for regulations which would ensure efficient management and proper utilization of the new and existing areas.

Based on the results of the anchorage meetings, the Captain of the Port developed a comprehensive list of anchorage use requirements which are included in § 110.228(b) of the proposed rules. These requirements eliminate the potential conflict between anchoring and fishing by prohibiting use of specific anchorages during officially designated drift fishing seasons, provide specific anchorage use guidelines, and provide the Coast Guard with realistic and enforceable anchorage management tools.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Although expansion of the Lower Columbia River Anchorage Grounds might adversely affect the commercial fishing industry, this proposal has been drafted so as to eliminate those effects. All other major users of the waterway are expected to either benefit from or be unaffected by adoption of these rules. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Lists of Subjects in 33 CFR Part 110

Anchorage Grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 110.228 is revised to read as follows:

§ 110.228 Columbia River, Oregon and Washington.

(a) *The anchorage grounds*—(1) *Astoria North Anchorage.* An area enclosed by a line beginning north of Astoria, Oregon, at latitude 46°11'47" N., longitude 123°49'39" W.; thence continuing northerly to latitude 46°12'05" N., longitude 123°49'35" W.; thence northeasterly to latitude 46°13'16" N., longitude 123°46'23" W.; thence southerly to latitude 46°13'01" N., longitude 123°46'12" W.; thence southwesterly to latitude 46°11'52" N., longitude 123°49'13"W,; thence westerly to the point of beginning.

(2) *Astoria South Anchorage.* An area enclosed by a line beginning north of Astoria, Oregon, at latitude 46°11'38" N., longitude 123°48'59" W.; thence continuing northerly to latitude 46°11'47" N., longitude 123°49'08" W.; thence northeasterly to latitude 46°13'03" N., longitude 123°45'50" W.; thence northeasterly to latitude 46°13'07" N.,longitude 123°45'37" W.; thence southerly to latitude 46°12'56" N., longitude 123°45'30" W.; thence southwesterly to latitude 46°12'24" N., longitude 123°46'33" W.; thence southwesterly to latitude 46°12'07" N., longitude 123°47'24" W.; thence southwesterly to the point of beginning.

(3) Longview Anchorage. An area enclosed by a line beginning southeast of Longview, Washington, at latitude 46°07'15" N., longitude 122°59'08" W.; thence continuing northeasterly to latitude 46°07'23" N., longitude 122°58'56" W.; thence southeasterly to latitude 46°06'58" N., longitude 122°58'20" W.; thence southeasterly to latitude 46°06'42" N., longitude 122°57'56" W.; thence southerly to latitude 46°06'33" N., longitude 122°58'04" W.; thence westerly to latitude 46°06'35" N., longitude 122°58'10" W.; thence northwesterly to latitude 46°06'42" N., longitude 122°58'23" W.; thence northwesterly to the point of beginning.

(4) *Kalama Anchorage.* An area enclosed by a line beginning northeast of Sandy Island at latitude 46°00'59" N., longitude 122°51'31" W.; thence continuing southeasterly to latitude 46°00'55" N., longitude 122°51'27" W.; thence southeasterly to latitude 46°00'36" N., longitude 122°51'11" W.; thence southerly to latitude 45°59'42" N., longitude 122°50'48" W.; thence westerly to latitude 45°59'39" N., longitude 122°50'59" W.; thence northerly to latitude 46°00'35" N., longitude 122°51'26" W; thence northwesterly to latitude 46°00'52" N., longitude 122°51'41" W.; thence northeasterly to the point of beginning.

(5) *Woodland Anchorage.* An area enclosed by a line beginning east of Columbia City, Oregon, at latitude 45°53'56" N., longitude 122°48'13" W.; thence continuing easterly to latitude 45°53'58" N., longitude 122°47'58" W.; thence southerly to latitude 45°53'29" N., longitude 122°47'41" W.; thence westerly to latitude 45°53'21" N., longitude 122°47'59" W.; thence northerly to latitude 45°53'42" N., longitude 122°48'09" W.; thence northerly to the point of beginning.

(6) *Henrici Bar Anchorage.* An area enclosed by a line beginning near the mouth of Bachelor Slough at latitude 45°47'25" N., longitude 122°46'45" W.; thence continuing southeasterly to latitude 45°46'46" N., longitude 122°46'10" W.; thence southeasterly to latitude 45°46'26" N., longitude 122°45'56" W.; thence southerly to latitude 45°46'04" N., longitude 122°45'46" W.; thence southerly to latitude 45°45'42" N., longitude 122°45'41" W.; thence southerly to latitude 45°45'38" N., longitude 122°45'41" W.; thence westerly to latitude 45°45'38" N., longitude 122°45'48" W.; thence northerly to latitude 45°46'17" N., longitude 122°46'06" W.; thence northwesterly to latitude 45°47'21" N., longitude 122°46'55" W.; thence northeasterly to the point of beginning.

(7) *Willow Bar Anchorage.* An area enclosed by a line beginning northeast of Reeder Point at latitude 45°43'41" N., longitude 122°45'36" W.; thence continuing easterly to latitude 45°43'40" N., longitude 122°45'26" W.; thence southerly to latitude 45°41'28" N., longitude 122°46'12" W.; thence westerly to latitude 45°41'30" N., longitude 122°46'22" W.; thence northerly to the point of beginning.

(8) *Kelley Point Anchorage.* An area enclosed by a line beginning east of Kelley Point at latitude 45°39'07" N., longitude 122°45'36" W.; thence continuing northeasterly to latitude 45°39'11" N., longitude 122°45'32" W.; thence southerly to latitude 45°39'03" N. longitude 122°45'17" W.; thence westerly to latitude 45°38'58" N., longitude 122°45'22" W.; thence northerly to the point of beginning.

(9) *Hayden Island Anchorage.* An area enclosed by a line beginning south of Mathews Point at latitude 45°38'44" N., longitude 122°44'35" W.; thence continuing easterly to latitude 45°38'27" N., longitude 122°43'21" W.; thence southeasterly to latitude 45°38'12" N., longitude 122°43'03" W.; thence westerly to latitude 45°38'19" N., longitude 122°43'40" W.; thence northwesterly to latitude 45°38'42" N., longitude 122°44'36" W.; thence northeasterly to the point of beginning.

(b) *The regulations.* (1) All designated anchorages are intended for the primary use of deep-draft vessels over 200 feet in length.

(2) If a vessel under 200 feet in length is anchored in a designated anchorage, the master or person in charge of the vessel shall:

(i) Ensure that the vessel is anchored so as to minimize conflict with large, deep-draft vessels utilizing or seeking to utilize the anchorage; and

(ii) Move the vessel out of the area if requested by the master of a large, deep-draft vessel seeking to enter or depart the area or if directed by the Captain of the Port.

(3) No vessel may occupy a designated anchorage for more than 30 consecutive days without a permit from the Captain of the Port.

(4) No vessel being layed-up or dismantled or undergoing major alterations or repairs may occupy a designated anchorage without a permit from the Captain of the Port.

(5) No vessel carrying a Cargo of Particular Hazard listed in § 126.10 of this Chapter may occupy a designated anchorage without permission from the Captain of the Port.

(6) No vessel in a condition such that it is likely to sink or otherwise become a hazard to the operation of other vessels shall occupy a designated anchorage except in an emergency and then only for such periods as may be authorized by the Captain of the Port.

(7) Except as allowed for emergencies, no vessel may occupy either the Henrici Bar or Willow Bar Anchorages during the commercial drift fishing seasons established by the Oregon Department of Fish and Wildlife (ODFW). Vessels occupying either of these anchorages at the time a drift fishing season is announced must depart prior to commencement of the season. In no case, however, shall a vessel have less than 48 hours to effect the move.

(c) ODFW will normally notify the Captain of the Port four days in advance of any commercial drift fishing season. Once notified, the Captain of the Port will inform the Portland Steamship Operators Association (PSOA) via the Merchant's Exchange and will notify the Columbia River and Bar Pilots.

Dated: November 3, 1986.

Theodore J. Wojnar,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 86-25862 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 3

Definition of Fraud

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration (VA) is proposing to amend its adjudication regulations concerning the definition of fraud. The amendment is necessary as the current definition of fraud refers exclusively to acts of commission and fails to include acts of omission. The effect of this amendment will be to clarify the definition of fraud. Additionally, the VA proposes to change the criteria for entitlement to an apportionment or death benefits by dependents and survivors of certain veterans who forfeited all rights to benefits because of fraud or treason and to clarify that the $10 fee limitation applies to representation in forfeiture cases. These changes are based on opinions of the VA General Counsel.

DATES: Comments must be received on or before December 17, 1986. It is proposed to make these amendments effective 30 days following the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132 at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until December 29, 1986.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Compensation and Pension Service (211B), Department of Veterans Benefits, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Section 3.901 of Title 38, Code of Federal Regulations, essentially defines fraud as a knowingly wrongful act committed by a person with regard to the submission of any false or fraudulent information or documentation concerning any claim for Veterans Administration benefits. This proposed change will effectively augment the definition of fraud to include failure by a person to take necessary action knowing that such action is required and that such failure will secure or retain benefit payments. The proposed creation of §3.1(aa) is designed to define fraud as acts of commission as well as acts of omission. The definition of fraud in § 3.901(a) is removed by reason of this change and will be restated in the proposed §3.901(aa). Additionally, the proposed §3.1(aa) will cover situations where the person receiving or securing benefit payments is obligated to act with respect to a claim, but knowingly and intentionally fails to perform the required act. The proposed definition of fraud, which includes fraudulent acts of commission and omission, shall apply to use of the term "fraud" wherever it appears in 38 CFR Part 3, with the exception of the forfeiture provisions in 38 CFR 3.901 which are mandated by law and apply only to acts of commission.

This proposed change is based on an opinion of the VA General Counsel. In that opinion, the General Counsel, citing the rules of general case law, held that the failure of a claimant to disclose could amount to fraud and that such is an adjudicative determination. In making the adjudicative determination that failure to disclose is an act of fraud, the burden of proof rests with the VA, and all elements cited in proposed §3.1(aa)(2) must be established.

Section 3.901(c) (which is proposed to be changed to §§ 3.901(b)) and 3.902(c) provide regulatory authority to apportion benefits to eligible dependents of a veteran who forfeited all entitlement to benefits because of a fraudulent or treasonable act which occurred prior to September 2, 1959. The above regulations are silent as to whether the apportionment decisions had to have been made prior to September 2, 1959. Based on an opinion of the VA General Counsel, 38 U.S.C. 3503(e) and 3504(c) specifically bar payment of an apportionment when the fraudulent or treasonable act took place prior to September 2, 1959, and the decision to apportion was not made prior to September 2, 1959. Essentially, the proposed amendment to 38 CFR 3.901 and 3.902 would require that both the fraudulent or treasonable act and the decision to apportion occur prior to September 2, 1959. The same rationale also applies to bar death benefits for survivors of veterans who forfeited their rights by reason of treasonable acts committed prior to September 2, 1959, if those benefits were not authorized prior to that date. An amendment to § 3.904(b) is being proposed to clarify that issue.

In another recent opinion the VA General Counsel held that the $10 limitation for representing VA claimants (30 U.S.C. 3404(c)) applies in the case of any administrative proceeding to determine rights of beneficiaries or claimants for veterans' benefits. We are proposing to amend § 3.905(b)(5) to require that the fee limitation be included in the notice to persons against whom forfeiture proceedings have been instituted.

The Administrator hereby certifies that these regulatory amendments will not have a significant economic impact

on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

(Catalog of Federal Domestic Assistance program numbers are 64.100 through 64.110.)

Approved: October 27, 1986.

By direction of the Administrator.

Thomas E. Harvey,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR, Part 3, Adjudication, is proposed to be amended as follows:

§ 3.1 [Amended]

1. In § 3.1(g)(4) remove the citation at the end which reads "(Pub. L. 89–670)".

2. In § 3.1, new paragraph (aa) is added and the cross-references are revised to read as follows:

§ 3.1 Definitions.

* * * * *

(aa) "Fraud" means:

(1) *Act of commission.* An act committed when a person knowingly makes or causes to be made or conspires, combines, aids, or assists in, agrees to, arranges for, or in any way procures the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, concerning any claim for benefits under any of the laws administered by the VA (except laws relating to insurance benefits), or

(2) *Act of omission.* Failure to act by a person in receipt of or entitled to receive benefits when such person:

(i) Has knowledge of facts upon which benefit or prospective benefit payments are based, and

(ii) Has knowledge of a change of circumstances and that such change could affect all or part of the benefit entitlement or eligibility, and

(iii) Fails to notify the VA of the change of circumstances with the actual intention of receiving or obtaining continued benefit payments or of obtaining increased benefit payments, and

(iv) Actually receives or retains payments or increased payments as a result of the failure to disclose the change of circumstances.

(3) *Forfeiture of VA benefits.* The forfeiture provisions of § 3.901 of this title apply only to acts of fraud as described in paragraph (aa)(1) of this section.

(Authority: 38 U.S.C. 210(c))

Cross-References: Pension. See § 3.3. Compensation. See § 3.4. Dependency and indemnity compensation. See § 3.5. Fraud. See § 3.901. Preservation of disability ratings. See § 3.951. Service-connection. See § 3.957.

§ 3.900 [Amended]

In § 3.900(d) remove the word "his" and add, in its place, the words "his or her".

3. In § 3.901, paragraph (a) is removed and paragraphs (b), (c), (d), and (e) are redesignated paragraphs (a), (b), (c), and (d); redesignated paragraphs (a), (b) and the last sentence of paragraph (c) are revised to read as follows:

§ 3.901 Fraud.

(a) *Effect on Claim.* For the purposes of paragraph (c) of this section, any person who commits fraud as defined in § 3.1(aa)(1) forfeits all rights to benefits under all laws administered by the VA other than laws relating to insurance benefits.

(b) *Forfeiture before September 2, 1959.* Where forfeiture for fraud was declared before September 2, 1959, in the case of a veteran entitled to disability compensation, the compensation payable except for the forfeiture may be paid to the veteran's spouse, children and parents provided the decision to apportion was authorized prior to September 2, 1959. The total amount payable will be the lesser of these amounts: (38 U.S.C. 3503(e))

* * * * *

(c) * * *

Where the veteran's rights have been forfeited, no part of his or her benefit may be paid to his or her dependents. (38 U.S.C. 3503(a), (d), (e))

4. In newly designated § 3.901(d), remove the citation at the end which reads "Pub. L. 92–328, 85 Stat. 393; effective June 30, 1972."

§ 3.902 [Amended]

5. In § 3.902(b) remove the word "he" and add, in its place, the words "he or she".

6. In § 3.902 the introductory texts of paragraphs (c), (c)(1) and (c)(2), and paragraph (e) are revised to read as follows:

§ 3.902 Treasonable acts.

* * * * *

(c) *Forfeiture before September 2, 1959.* Where forfeiture for treasonable acts was declared before September 2, 1959, the Administrator may pay any part of benefits so forfeited to the dependents of the person provided the decision to apportion was authorized prior to September 2, 1959, except that the amount may not be in excess of that which the dependent would be entitled to as a death benefit. (38 U.S.C. 3504(c))

(1) *Compensation.* Whenever a veteran entitled to disability compensation has forfeited his or her right, any part of the compensation payable except for the forfeiture may be paid to the veteran's spouse, children and parents. The total amount payable will be the lesser of these amounts:

* * * * *

(2) *Pension.* Whenever a veteran entitled to pension has forfeited his or her right, any part of the pension payable except for the forfeiture provision may be paid to the veteran's spouse and children. The total amount payable will be the lesser of these amounts:

* * * * *

(e) *Children.* A treasonable act committed by a child or children, regardless of age, who are in the surviving spouse's custody and included in an award to such person will not affect the award to the surviving spouse.

§ 3.903 [Amended]

7. In § 3.903(a)(4) remove the citation at the end which reads "Pub. L. 92–128; 85 Stat. 347".

§ 3.904 [Amended]

8. In § 3.904(a) remove the word "his" wherever it appears and add, in its place, the words "his or her".

9. In § 3.904 the first sentence and the cite at the end of paragraph (b) are revised to read as follows:

§ 3.904 Effect of forfeiture after veteran's death.

* * * * *

(b) *Treasonable acts.* Death benefits may be paid as provided in paragraph (a) of this section where forfeiture by reason of a treasonable act was declared before September 2, 1959 and such benefits were authorized prior to that date. * * * (38 U.S.C. 3503(e); 38 U.S.C. 3504(c))

* * * * *

§ 3.905 [Amended]

10. In § 3.905 paragraphs (a) and (b) remove the words "Chief Attorney" wherever they appear and add, in their place, the words "District Counsel".

11. In § 3.905 paragraph (b)(5) is revised to read as follows:

§ 3.905 Declaration of forfeiture or remission of forfeiture.

* * * * *

(b) * * *

(5) The right to a hearing within 60 days, with representation by counsel of the person's own choosing, that fees for the representation are limited in accordance with 38 U.S.C. 3404(c), and that no expenses incurred by a claimant, counsel or witness will be paid by the VA.

* * * * *

[FR Doc. 86-25813 Filed 11-17-86; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 265

[SWH-FRL-3113-1]

Solid Waste Disposal; Subtitle D Study Phase I Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of Subtitle D Study Phase I Report, and request for comments.

SUMMARY: The Environmental Protection Agency is today announcing the availability of the Subtitle D Study Phase I Report, which summarizes data gathered in Phase I of EPA's Subtitle D study being completed in response to the 1984 Hazardous and Solid Waste Amendments. The report includes information on characteristics and management practices of nonhazardous (Subtitle D) wastes, characteristics of Subtitle D land disposal facilities, and State Subtitle D regulatory programs. Recommendations for Phase II study are also presented. Phase II will culminate in the submission of a report to Congress by November 1987. Comments are invited.

DATE: EPA will accept public comments until January 2, 1987. Comments postmarked after the close of the comment period will be stamped "late".

ADDRESSES: The report is available for viewing at all EPA libraries and in the EPA RCRA docket room, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, from 9:30 a.m. to 3:30 p.m., Monday thru Friday, except legal holidays; telephone: (202) 475-9327. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 20 cents per page. The document can be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: "Subtitle D Study Phase I Report (EPA/530-SW-86-054, NTIS No.: PB-87-116-810). Three copies of written comments should be submitted to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, 401 M Street, SW., Washington, DC 20460 and identified "F-86-SRCN-FFFFF."

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at (800) 424-9346 or (202) 382-3000. For technical information on the report, contact Gerry Dorian, Office of Solid Waste (WH565E), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4688.

SUPPLEMENTARY INFORMATION: In 1979, under authority of sections 1008(a)(3) and 4004(a) of Subtitle D of the Resource Conservation and Recovery Act (RCRA), EPA promulgated "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257.) The Criteria include environmental performance standards for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on human health or the environment. Facilities that violate the Criteria are "open dumps." The Criteria are enforced by States or through citizen suits. In 1984, Congress passed the Hazardous and Solid Waste Amendments (HSWA), including major provisions regarding the solid waste regulatory program. The Amendments require EPA to conduct a study and, by November 8, 1987, submit a report to Congress addressing whether the current Criteria (40 CFR Part 257) are adequate to protect human health and the environment, and whether additional authorities are needed to enforce the Criteria. Further, EPA is required to revise the Criteria by March 31, 1988, for facilities that may receive hazardous household waste or small quantity generator (SQG) hazardous waste. HSWA also requires States to have a permit program for the existing Criteria by November 1987 and to have a revised permit program 18 months after the revised Criteria are promulgated. In response to these statutory mandates, EPA is now gathering data for both the report to Congress and the Criteria revisions.

EPA's study for the report to Congress (the "Subtitle D Study") is being conducted in two phases. In Phase I EPA compiled existing data on Subtitle D wastes, facilities, and State regulatory programs from the literature, EPA and State agency files, and facility owners and operators. In Phase II of the study, EPA will gather additional data on these topics and complete an assessment of the adequacy of the current Federal Criteria.

Some of the major projects undertaken during Phase I included a survey of State programs, a review of State regulations, a comprehensive literature review on industrial non-hazardous wastes, an examination of municipal solid waste and household hazardous waste characteristics, and a review of Subtitle D facilities on the National Priorities List (NPL). Information from these and other efforts is summarized in the Subtitle D Study Phase I Report.

The Phase I report is organized into six major sections that are preceeded by an Executive Summary. Section 1 contains the introduction to the report and discusses the statutory background for the Subtitle D Study. Section 2 summarizes the projects that comprised Phase I of the Subtitle D Study. Section 3 characterizes those wastes types defined as Subtitle D wastes under RCRA. Section 4 characterizes the various types of Subtitle D land disposal facilities, including landfills, surface impoundments, land application units, and waste piles. Section 5 characterizes State Subtitle D regulatory programs. Section 6 identifies those data needs remaining and outlines the general direction of Phase II of the Subtitle D Study.

There are four appendices to the report. Appendix A reproduces the current Subtitle D Criteria (40 CFR Part 257). Appendix B contains data tables on industrial nonhazardous waste. Appendix C contains information collected from the States on municipal waste landfill capacity problems. Appendix D contains more detailed

information on State Subtitle D Program regulations.

Dated: November 6, 1986.

J. W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86-25845 Filed 11-17-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-417, RM-5445]

Radio Broadcasting Services; Window Rock, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Western Indian Ministries, Inc. seeking the allotment of Class C Channel 241 to Window Rock, Arizona, as that community's second local FM service.

DATES: Comments must be filed on or before December 29, 1986, and reply comments on or before January 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mark E. Fields, Esq., Miller and Fields, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6539.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-417, adopted October 15, 1986, and released November 6, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-25999 Filed 11-17-86; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 51, No. 222
Tuesday, November 18, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Activities Under OMB Review

AGENCY: Action.

ACTION: Information collection request under review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the National Volunteer Agency.

Background

Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [request for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

Information About This Proposed Collection

Agency Clearance Officer—Melvin E. Beetle, 202–634–9321
Agency Address: ACTION, 806 Connecticut Ave., NW., Washington, DC 20525
Office of ACTION Issuing Proposal: Domestic Operations
Title of Form: Request for VISTA Information Postcard
Type of Request: On occasion
Frequency of Collection: One Response Per Individual
General Description of Respondents: Citizens interested in receiving information on becoming a VISTA Volunteer
Estimated Number of Annual Responses: Approximately 2,250
Estimated Annual Reporting or Disclosure Burden: 68 hours
Respondent's Obligation to Reply: Voluntary
Person responsible for OMB Review: Judy MacIntosh, (202) 395–6880

Dated: November 12, 1986.

Melvin E. Beetle,

ACTION Clearance Officer

November 12, 1986.

[FR Doc. 86–25970 Filed 11–17–86; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Types and Quantities of Agricultural Commodities To Be Made Available for Donation Overseas

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the determination of the Secretary of Agriculture of the types and quantities of agricultural commodities to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1987.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 447–3573.

SUPPLEMENTARY INFORMATION: Section 416(b) of the Agricultural Act of 1949, as amended 7 U.S.C. 1431(b) ("section 416(b)"), requires the Secretary of Agriculture to make available for donation overseas for each of the fiscal year 1986–1990, not less than certain minimum quantities of Commodity Credit Corporation ("CCC") uncommitted stocks of grains and oilseeds, and dairy products. The minimum quantity of grains and oilseeds required to be made available shall be the lesser of 500,000 metric tons of CCC's uncommitted stocks or 10 percent of the estimated year-end levels of CCC's uncommitted stocks of grains and oilseeds; the minimum quantity of dairy products shall be 10 percent of CCC's uncommitted stocks of dairy products, but not less than 150,000 metric tons to the extent that uncommitted stocks are available. The minimum quantity requirements may be waived by the Secretary if the Secretary determines and reports to Congress that there are insufficient valid requests for eligible commodities under section 416(b) for any fiscal year, or if the Secretary determines the restrictions in furnishing of commodities under section 416(b)(3) prevent the making available of commodities in such quantities.

Section 416(b) also requires the Secretary to estimate the expected year-end levels of CCC's uncommitted stocks of grains and oilseeds, and dairy products for each of the fiscal years 1986–1990.

The Secretary is further required to publish in the **Federal Register** his determination of the quantities of commodities that shall be made available for each fiscal year along with a breakdown by kind of commodity and the quantity of each commodity.

Determination

In accordance with section 416(b), I have determined that the 500,000 metric tons of grains and oilseeds, and 150,000 metric tons of dairy products shall be made available for donation overseas pursuant to section 416(b) during fiscal year 1987. The kinds and quantities of commodities that shall be made available for donation are as follows:

Commodity	Quantity (metric tons)
Grains and oilseeds:	
Wheat	250,000
Barley	50,000
Corn	50,000
Sorghum	50,000
Rice	50,000
Soybeans	50,000
Total	500,000
Dairy products:	
Nonfat dry milk	125,000
Cheese	10,000
Butter/butteroil	15,000
Total	150,000

Done at Washington, DC, this 27th day of September, 1986.

Richard E. Lyng,

Secretary.

[FR Doc. 86–25996 Filed 11–17–86; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration
Title: Public Telecommunications Facilities Program Application Form
Form Number: Agency—N/A; OMB—0660–003
Type of Request: Revision of a currently approved collection (expedited review requested)
Burden: 450 respondents; 45,000 reporting hours
Needs and Uses: The National Telecommunications and Information Administration (NTIA) administers the Public Telecommunications Facilities Grant Program by annually conducting a grant application and review cycle. The information collected is used by NTIA in order to assess proposals for use of grant funds and determine which proposals should be granted.
Affected Public: State or local governments, non-profit institutions
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC. 20503.

Dated: November 10, 1986.

Ed Michals,

Department Clearance Officer, Information Management Division, Office of Information Resources Management

[FR Doc. 86–25981 Filed 11–17–86; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of the Census

Annual Wholesale Trade; Determination

In accordance with Title 13, United States Code, sections 182, 224, and 225, I have determined the Census Bureau needs to collect data covering year-end inventories, annual sales, and purchases to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides on a comparable classification basis annual sales, inventories, and purchases for 1985 and 1986. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require selected firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 1986 Annual Wholesale Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submission within 20 days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

I have directed, therefore, that an annual survey be conducted for the purpos of collecting these data.

Dated: November 12, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86–25956 Filed 11–17–86; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: November 18, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than November 30, 1987.

Antidumping duty proceedings and firms	Periods to be reviewed
Pressure Sensitive Plastic Tape from Italy:	
Autoadesivitalia	10/85–09/86
Manuli	10/85–09/86
NAR	10/85–09/86
Barium Chloride from the People's Republic of China:	
Sinochem	04/06/84–09/30/84
	10/01/85–09/30/86

Countervailing duty proceedings	Periods to be reviewed
Agricultural tillage tools from Brazil	06/10/85–12/31/85
Certain carbon steel products from Sweden	03/20/85–12/31/85

These initations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 35.10(c)).

Dated: November 10, 1986.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–25984 Filed 11–17–86; 8:45 am]

BILLING CODE 3510–DS–M

[C–357–403]

Oil Country Tubular Goods From Argentina; Preliminary Results of Countervailing Duty; Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on oil country tubular goods from Argentina. The review covers the period January 1, 1985 through December 31, 1985 and four programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant for the period of review to be 0.56 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 18, 1986.

FOR FURTHER INFORMATION CONTACT: Richard C. Henderson or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: .

Background

On November 27, 1984, the Department of Commerce (" the Department") published in the **Federal Register** a countervailing duty order on oil country tubular goods from Argentina (49 FR 46564). On November 13, 1985, the petitioners, Lone Star Steel Company and CF&I Steel Corporation, requested in accordance with § 355.10 of the Commerce Regulations an administrative review of the order. We published the initiation on July 17, 1986 (51 FR 25923). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Argentine oil country tubular goods. Such merchandise is currently classifiable under items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244 of the Tariff Schedules of the United States Annotated. These products include finished or unfinished oil country tubular goods, which are hollow steel products of circular cross-section intended for use in the drilling of oil or gas, as well as oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) specifications or proprietary specifications.

The review covers the period January 1, 1985 through December 31, 1985 and four programs: (1) The reembolso, a cash rebate of taxes; (2) post-export financing; (3) BANADE long-term loan guarantees; and (4) discounts of foreign currency accounts receivable under Circular RF–21. During the period of review, Siderca S.A.I.C. ("SIDERCA"), was the only known exporter of Argentine OCTG to the United States.

Analysis of Programs

(1) Reembolso

The reembolso is a cash rebate of taxes paid upon exportation and is calculated as a percentage of the f.o.b. invoice price. The Tariff Act and the Commerce Regulations allow the rebate of the following: (1) Indirect taxes borne by inputs that are physically incorporated in the exported product (*see* Annex I.1 of Part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (*see* Annex I.2 of Part 355 of the Commerce Regulations). If the tax rebate upon export exceeds the total amount of allowable indirect taxes described above, we consider the difference to be an overrebate and, therefore, a bounty or grant.

We allowed the rebate of indirect taxes on raw materials and final stage indirect taxes. Based on our analysis of the total tax incidence on oil country tubular goods ("OCTG"), we found that the total amount of allowable indirect taxes was 9.72 percent *ad valorem*. In 1985, the reembolso rate for OCTG ranged from zero to 4 percent. Therefore, we preliminarily find no overrebate of indirect taxes for the period of review.

(2) Post-export Financing

The Central Bank makes post-export financing available to exporters through Circular OPRAC 1–9. The Central Bank limits these loans to 30 percent of the peso/austral equivalent of the foreign currency used in the export transaction. The maximum term of the loan is 180 days, and interest must be paid quarterly. The interest rate charged is the *tasa regulada* ("the regulated rate"), which the Central Bank sets monthly. SIDERCA received benefits from OPRAC 1–9 loans in 1985.

To calculate the benefit, we compared the rate of interest charged on those loans with a national average commercial rate. We used as our benchmark the weighted-average interest rate of comparable short-term loans available from Argentine banks during the period of review. These are the regulated, unregulated, and acceptance rates. (*See* the final affirmative countervailing duty determination and countervailing duty order on this case (49 FR 46564, November 27, 1984).) We made both the benchmark and the preferential rates effective by adjusting for the number of interest payments made during the year. Comparing the two rates on loans with interest payments during the review period, we preliminarily determine the benefit from this program to be 0.56 percent *ad valorem*.

(3) Other Programs

We also examined the following programs and preliminarily find that SIDERCA did not use them during the review period: (a) BANADE long-term loan guarantees, and (b) discounts of foreign currency accounts receivable under Circular FR–21.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.56 percent *ad valorem* for the period of review.

The Department therefore intends to instruct the Customs Service to assess countervailing duties of 0.56 percent of the f.o.b. invoice price on shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1985.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751 (a)(1) of the Tariff Act, on all shipments of OCTG from Argentina entered, or withdrawn from warehouse, for consumption on or after the date of pulication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results by December 9, 1986, and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held on December 9, 1986. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: November 12, 1986.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-25985 Filed 11-17-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: Mr. S. Jonathan Stern (P281B)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: Mr. S. Jonathan Stern, Department of Biological Sciences.

b. Address: San Francisco State University, 1600 Halloway, San Francisco, California 94132.

2. Type of Permit: Scientific Research/Scientific Purposes.

3. Name and Number of Marine Mammals: An unspecified number of gray whales (Eschrichtius robustus) may be harassed while determining under what conditions whales react to the presence of whale-watching vessels.

4. Location of Activity: Nearshore waters around Pt. Reyes, National Seashore, Marin County, California.

5. Period of Activity: 1 year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: November 12, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-26026 Filed 11-17-86; 8:45 am]

BILLING CODE 3510-08-M

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of an experimental fishing permit.

SUMMARY: This notice announces the issuance of two experimental fishing permits to U.S. fishermen to harvest soupfin sharks and other groundfish species using set nets in the fishery conservation zone north of 38° N. latitude. The permits authorize the use of experimental fishing gear which is otherwise prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and implementing regulations.

EFFECTIVE DATES: October 1, 1986, through March 31, 1987.

ADDRESS: Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-526-6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR Part 663 specify that experimental fishing permits (EFPs) may be issued to authorize fishing which is otherwise prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at § 663.10.

An EFP application submitted by two U.S. fishermen to harvest groundfish using gill nets in the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and northern California was received on August 26, 1986. Current groundfish regulations at § 663.26 do not authorize the use of drift gill nets nor set nets (anchored gill nets) north of 38° N. latitude to harvest groundfish. A notice acknowledging receipt of the application, describing the proposal, and requesting public comment was published in the **Federal Register** on September 19, 1986 (51 FR 33290). One public comment was received recommending denial of the permit because of the potential for marine mammal and seabird entanglement in gill nets. The application was considered by the Pacific Fishery Management Council, including the directors of the fishery management agencies of Washington, Oregon, California, and Idaho, at its September 1986, public meeting in Portland, Oregon. The Council recommended that NMFS issue an EFP with appropriate restrictions and limitations so that information on the experimental fishery could be obtained. The NMFS Regional Director, after having considered all factors including concerns for potential marine mammal entanglement in this experimental gear, issued two EFPs under the provisions of § 663.10. However, the EFPs do not authorize the use of drift gill nets as proposed by the applicants and include restrictions on the conduct of the experimental fishery to alleviate concerns over the potential for the experimental gear adversely affecting marine mammals or seabirds.

The EFPs authorize the experimental use of set nets to fish for soupfin sharks with an incidental catch of other groundfish species in the FCZ north of 38° N. latitude. The permits are valid on two vessels, both of which are based in Oregon, from October 1, 1986, to March 31, 1987. Under the terms and conditions of the EFPs, sets may not be made in waters shallower than thirty fathoms nor closer than five nautical miles to shore to minimize incidental interactions with marine mammals. The Regional Director may suspend the permit or require an adjustment of the experimental operation if marine mammals are incidentally taken or if more than five percent of the fish landed from a fishing trip are groundfish species other than sharks. The nets must have a minimum nine-inch mesh webbing and no more than 1600 fathoms of net can be fished simultaneously. Permittees are required to maintain detailed logs on the fishing operation and allow an observer to accompany the vessel if so requested.

Further details or a copy of the permits may be obtained from the NMFS Regional Director at the above address.

(16 U.S.C. 1801 *et seq.*)

Dated: November 12, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries.

[FR Doc. 86-25938 Filed 11-17-86; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Open Meeting of Frequency Management Advisory Council

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of open meeting, Frequency Management Advisory Council.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 4:00 p.m. on December 8, 1986, in Room 1605 at the United States Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC (Public entrance to the building is on 14th Street between Pennsylvania and Constitution Avenue.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Proposed NTIA policy on allocation of multifunction spread spectrum systems.

(2) Proposed NTIA policy on Federal Government trunked land mobile radio.

(3) ITU conference preparation for High Frequency and Medium Frequency WARC's.

(4) Preliminary considerations for space station frequency availability.

(5) Recent developments relative to radio frequency radiation exposure guidelines.

(6) NTIA survey on standards for AM stereo radio.

The meeting will be open to the public observations; and a period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before December 5, 1986. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquires may be addressed to the Executive Secretary, FMAC, Mr. Charles L. Hutchison or Mr. Michael W. Allen, National Telecommunications and Information Administration, Room 4706, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, telephone 202-377-0805.

Dated: November 12, 1986.

Michael W. Allen,

Acting Executive Secretary, FMAC National Telecommunications and Information Administration.

[FR Doc. 86-25949 Filed 11-17-86; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Panel on Information Management Concepts; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: Monday, 3 December 1986

Times of Meeting: 0800-1700 hours

Place: Pentagon, Washington, DC

Agenda: The Army Science Board Ad Hoc Panel on Army Information Management Concepts and Architecture will meet to organize its work and hear briefings on evolution of the Army's Information Mission Area and Current Information Management architectural initiatives. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-25979 Filed 11-17-86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board Closed Meeting; Steering Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: Monday, 8 December 1986

Times of Meeting: 0900-1500 hours

Place: Pentagon, Washington, DC

Agenda: The Army Science Board Steering Committee will meet for discussions of Tasking the ASB/Role of ERB; past and future Summer Studies; Imminent Ad Hoc Subgroups; ASB Orientation/Lessons Learned; and FSG future plans. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-25980 Filed 11-17-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Program Research and Development Announcement; State Geothermal Research and Development

AGENCY: Department of Energy.

ACTION: Program Research and Development Announcement (PRDA) No. DE-PR07-861D12662 for State Geothermal Research and Development.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, desires to receive and consider for support, proposals from state agencies who desire to cost-share on state-oriented research on those aspects of geothermal energy that are not being studied by

private industry, but which have the potential for results that will be applicable by industry in development of geothermal resources. The Geothermal Energy Research, Development, and Demonstration Act of 1974 provides for DOE to enter into agreements with States to perform geothermal resource analyses and technology transfer. The Congress has mandated that certain funds would be used to assist the States with significant hydrothermal resources. The total amount of DOE funding allotted for this program is $510,000. The DOE cost-share will not exceed $75,000 per award and the state must cost-share a minimum of 10% of the gross amount requested. It is anticipated that at least six awards will be made, depending on the amount of each award. The expected contractual relationship will be grants.

Minimum Requirements: Responses shall demonstrate that: (1) The agency is designated by the state as being responsible for geothermal resources within the state; (2) the areas of research are geological, geochemical, geophysical, or hydrological aspects of hydrothermal systems; (3) the proposed research must be on hydrothermal resources, and the states from which the proposals are received must have a significant hydrothermal resource base as defined by DOE research programs or by the U.S. Geological Survey Circulars 790 and 892; and (4) the proposed work must be in-state or have written approval from the appropriate executive in the other state(s) where the proposed work is to be done.

DATES: The PRDA will be issued during November 1986 with proposals due approximately 90 days thereafter.

Contacts: Potential proposers desiring to receive a copy of the PRDA should provide a written request to the following address: Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402, ATTN: Ronald A. King, Contracts Management Division.

Issued at Idaho Falls, Idaho, on October 30, 1986.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 86-26023 Filed 11-17-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES87-7-000 et al.]

Electric Rate and Corporate Regulation Filings: Consumers Power Company et al.

November 13, 1986.

Take notice that the following filings have been made with the Commission:

1. Consumers Power Co.

[Docket No. ES87-7-000]

Take notice that on November 7, 1986, Consumers Power Company filed an application pursuant to section 204 of the Federal Power Act, seeking authority to issue and sell, or guarantee, up to $500,000,000 in secured and/or unsecured short-term debt including but not limited to, notes, drafts, debentures and commercial paper. The issuance of the notes, drafts, debentures and commercial paper would be issued from time to time, until December 31, 1987, with maturities of 364 days or less.

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Co.

[Docket No. ES87-9-000]

Take notice that on November 4, 1986, Idaho Power Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue not more than $135,000,000 of short-term debt or other evidence of indebtedness on or before December 31, 1987, with a final maturity no later than December 31, 1988.

Comment date: December 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. MDU Resources Group, Inc.

[Docket No. ES87-10-000]

Take notice that on November 7, 1986, MDU Resources Group, Inc. filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, seeking an Order (a) exempting the Applicant from the competitive bidding requirements of the Commission and (b) authorizing the issuance of up to 350,000 shares of Common Stock, par value $5, pursuant to Applicant's Tax Deferred Compensation Savings Plan For Collective Bargaining Unit Employees.

Comment date: December 5, 1986, in accordance with Standard Paragraph E. at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26003 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9820-001, 6727-001, 8296-001, 2905-007

Cross Flow Hydroelectric, Inc., Northwest Power Co.; Malacha Power Project Vermont Public Power Supply Authority; Availability of Environmental Assessment and Finding of No Significant Impact

November 13, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town or county	Applicant
			Exemptions		
9820-001	Cabazon	CA	Cabazon County Water District Supply system, which uses water from Millard Canyon Creek.	Cabazon	Cross Flow Hydro-electric, Inc.
			Licenses		
6727-001	Miner's Tunnel	CA	South Yuba River	Nevada County	Northwest Power Company.
8296-001	Muck Valley	CA	Pit River	Fall River Mills	Malacha Power Project.
			Amendments		
2905-007	Enosburg Falls Hydroelectric	VT	Missisquoi River	Enosburg Falls	Vermont Public Power Supply Authority.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26005 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 943-000]

Public Utility District No. 1 of Chelan County, WA; Intent To Prepare Environmental Impact Statement and To Hold Scoping Session and Public Hearing

November 12, 1986.

The Public Utility District No. 1 of Chelan County, Washington, filed an application for a new license for continued operation and maintenance of the Rock Island Hydroelectric Project, FERC No. 943. The project is located on the Columbia River, in Chelan and Douglas Counties, Washington.

The Commission staff has determined that issuance of a new license for the existing hydroelectric project would constitute a major federal action significantly affecting the quality of the human environment. The staff therefore intends to prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act. A scoping document will follow this public notice and be sent to all recipients of this notice prior to the public and scoping meetings scheduled for December 1986.

Scoping Session

Interested persons and agencies are invited to participate in a scoping session to discuss the environmental impact issues associated with the relicensing of the Rock Island Hydroelectric Project. The scoping session will be held on Wednesday, December 17, 1986, commencing at 1:00 p.m. at the House Office Building, Hearing Room C, Olympia, Washington.

Scoping sessions are utilized by the Commission staff to do the following: (1) Present environmental issues that have been identified for coverage in the EIS to the public and to experts familiar with the project; (2) receive input from the public and experts on the issues presented; (3) clarify the significance of issues; (4) identify additional issues for EIS treatment; and (5) identify issues that do not merit EIS treatment. Agencies and individuals with environmental expertise and concerns are encouraged to attend the meeting and to assist the Commission's staff with the determination of issues to be addressed in the EIS. For additional information, contact Alan Mitchnick at 202-376-9061.

Public Hearing

Interested officials and members of the public are invited to express their views about the project in a public hearing. A public hearing will be held on Tuesday, December 16, 1986, commencing at 7:30 p.m., at the Wenatchee Center, 121 N. Wenatchee Avenue, Golden Delicious Room, Wenatchee, Washington. The public hearing will be conducted by the Commission's staff.

At the public hearing persons may give their statements orally or in writing. The hearing will be recorded by a stenographer, and all statements (oral and written) will become part of the public hearing record. In addition, the public hearing record will remain open until January 21, 1987, and anyone may submit written comments on the project until that time. Comments should be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should clearly show the project name and number (Rock Island Project, FERC No. 943-000) on the first page.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26009 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9027-001 et al.]

Hydroelectric Applications (SNC Hydro, Inc., et al.); Notice of Application Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Major License (5MW or less).

b. Project No: 9027-001.

c. Date Filed: June 7, 1985.

d. Applicant: SNC Hydro Inc.

e. Name of Project: Monongahela Lock and Dam No. 7.

f. Location: On the Monongahela River near Greensboro, Fayette County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 17 U.S.C. 791(a)-825(r).

h. Contact Person: Keith F. Corneau, SNC Hydro Inc., 125 Wolf Road, Albany, NY 12205, (518) 482-7773.

i. Comment Date: December 29, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Monongahela Lock and Dam No. 7 and would consist of: (1) a proposed 96-foot-long by 67-foot-wide reinforced concrete powerhouse containing two 2,500-kW bulb or pit turbine-generator units, located at the right abutment of the dam; (2) proposed intake and tailrace channels; (3) a proposed 12-kV underground transmission line approximately 210 feet long; (4) a new access road about 1,200 feet long; and (5) appurtenant facilities.

The applicant estimates that the average annual energy generation would be 24.6 GWh. The project energy would be sold to West Penn Power Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C., D1.

2 a. Type of Application: Preliminary Permit.

b. Project No: 10106–000.

c. Date Filed: September 30, 1986.

d. Applicant: Frank A. Hartman.

e. Name of Project: South Creek.

f. Location: On South Creek in the Challis National Forest in T7N, R29E near Howe, in Butte County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Carl L. Myers, Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712, (208) 336–1425.

i. Comment Date: December 29, 1986.

j. Description of Project: The proposed run-of-the-mill project would consist of: (1) a 2-foot-high diversion weir at elevation 6,660-feet; (2) a 9,380-foot-high-long, 12-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 250 kW; and (4) a 1-mile-long transmission line. Applicant estimates the average annual energy production to be 1,738,240 kWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $27,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C., and D2.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 10107–000

c. Date Filed: September 30, 1986.

d. Applicant: Frank A. Hartman.

e. Name of Project: Badger Creek.

f. Location: On Badger Creek within lands owned by the Bureau of Land Management in T9N, R27E, and R28E, near Howe in Butte County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Carl L. Myers, Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712, (202) 336–1425.

i. Comment Date: December 29, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) a 2-foot-high diversion weir at elevation 6,800–feet; (2) a 12,800-foot-long, 12-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 450 kW; and (4) a 0.25-mile-long transmission line. Applicant estimates the average annual energy production to be 3,532,000 kWh. The applicant estimates that the cost of the works to be performed under the preliminary permit would be $30,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 10117–000.

c. Date Filed: October 8, 1986.

d. Applicant: Rock River Power & Light Corporation.

e. Name of Project: Lower Watertown Dam.

f. Location: Rock River, Jefferson and Dodge Counties, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Thomas J. Reiss, Jr., President, Rock River Power & Light Corporation, P.O. Box 553, 319 Hart Street, Watertown, WI 53094, (414) 261–7975.

i. Comment Date: December 29, 1986.

j. Description of Project: The proposed project would consist of: (1) an existing concrete dam 225 feet long and 9.5 feet high: (2) an existing reservoir with a surface area of 130 acres and a storage capacity of 250 acre-feet at a normal maximum surface elevation of 808 feet mean sea level; (3) a proposed concrete flume 25 feet long and 16 feet wide: (4) a proposed concrete and block powerhouse 40 feet long and 20 feet high, housing three proposed turbine-generators of 460 kW combined capacity; (5) a proposed 480 volt transmission line 100 feet long, and (6) appurtenant facilities. The estimated annual energy production is 2.9 GWh at a net hydraulic head of 11 feet. The existing facilities are owned by the City of Watertown, Wisconsin. Project power would be sold to Wisconsin Electric Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $30,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 10053–000.

c. Date Filed: July 31, 1986.

d. Applicant: Mr. Bill Harris.

e. Name of Project: Marble Creek.

f. Location: Marble Creek, near Benton, in Mono County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bill Harris, HCR30 Box 29, Chiloquin, OR 97624.

i. Comment Date: December 31, 1986.

j. Description of Project: The proposed project would consist of: (1) a diversion structure across Marble Creek at elevation 6,320 feet msl; (2) an off-stream retention basin having a capacity of three acre-feet; (3) a 12–inch-diameter, 17,420–foot-long penstock; (4) a powerhouse containing a single turbine-generator unit with a rated capacity of 250 kW under a head of 1,320 feet and a design flow of 3 cfs, and producing an estimated annual generation of 1.1 GWh; and (5) a ¼-mile-long transmission line interconnecting the project to an existing Southern California Edison Company line. The majority of the lands included in the project area are under the jurisdiction of the Bureau of Land Management. The proposed project would be located in Sections 14, 15, 21, 22, and 28, Township 2 South, Range 32 East MDBM, Monor Country, California.

k. This notice also consists of the following standards: A5, A7, A9, A10, B, C, and D2.

l. The Applicant estimates that the cost of the work to be performed under this preliminary permit would be $40,000 to $50,000.

6 a. Type of Application: Exemption (5MW or less).

b. Project No.: 10078–000.

c. Date Filed: September 5, 1986.

d. Applicant: Carl and Elaine Hitchcock.

e. Name of Project: Eau Galle Hydro Project.

f. Location: On the Eau Galle River near Eau Galle, Dunn County, Wisconsin.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Carl E. Hitchcock, 423 Green Tree Road, Kohler, WI 53044, (414) 452–2624.

i. Comment Date: December 12, 1986.

j. Description of Project: The proposed project would consist of: (1) an existing concrete dam approximately 171 feet long and 32 feet high; (2) an existing 350-acre reservoir having a storage capacity of 2,070 acre-feet at an elevation of 757 msl; (3) a proposed powerhouse integral with the dam, located on the east side of the river, housing two 150-kW generators for a total installed capacity of 300 kW; (4) a new tailrace; (5) a proposed short 12.7-kV transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual generation would be 1.03 GWh. The Applicant holds all real estate interests necessary to develop and operate the proposed project.

k. Purpose of Project: All project energy produced would be sold to Northern States Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

7 a. Type of Application: Transfer of License.

b. Project No.: 6552–002.

c. Date Filed: September 23, 1986.

d. Applicant: Frederick D. Ehlers, licensee and HDI Associates V and Frederick D. Ehlers, transferees.

e. Name of Project: North Fork Sprague River.

f. Location: North Fork Sprague River in Klamath County, Oregon, near the town of Bly, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Paul V. Nolan, Esquire, Van Ness, Feldman, Sutcliffe and Curtis, 1050 Thomas Jefferson Street NW., Seventh Floor, Washington, DC 20007, (202) 331–9400

Frederick D. Ehlers and HDI Associates V, c/o Hydroelectric Development Inc., 10394 West Chatfield Drive, Suite 108, Littleton, CO 80127, (303) 973–0951.

i. Comment Date: December 15, 1986.

j. Description of Transfer: On December 20, 1985, a minor license was issued to Mr. Frederick D. Ehlers for the construction, operation, and maintenance of the North Fork Sprague River Project No. 6552. It is proposed to transfer the license to HDI Associates V and Frederick D. Ehlers. The licensee and transferees have jointly and severally applied for the transfer of the license to the transferees.

The transferees are a limited partnership organized under the laws of the State of Oregon and a citizen of the United States.

The licensee certifies that it has fully complied with the terms and conditions of its license and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferees accept all the terms and conditions of the license and agree to be bound thereby to the same extent as though they were the original licensee.

k. This notice also consists of the following standard paragraphs: B and C.

8 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 9759–000.

c. Date Filed: December 30, 1985.

d. Applicant: Centreville Hydro, Inc.

e. Name of Project: Centreville Dam.

f. Location: On the Prairie River near Centreville, St. Joseph County, Michigan.

g. Filed Pursuant to: Energy Security Act of 1980 Section 408 (16 U.S.C. 2705 and 2708).

h. Contact Person: Gregory P. Sirna, Centreville Hydro, Inc., 1776 Valleywood Ct. #4, Portage, MI 49002–5248, (616) 327–9059.

i. Comment Date: December 15, 1986.

j. Description of Project: The proposed project would consist of: (1) an existing earth embankment and concrete apron over a rock and timber crib dam approximately 210 feet long and 13 feet high; (2) an existing 40 acre reservoir with a storage capacity of 200 acre-feet at a normal maximum water surface elevation of 820.9 feet msl; (3) an existing headrace 4,325 feet long; (4) an existing powerhouse containing proposed 80-kW and 45-kW hydropower units; (5) an existing tailrace 2,000 feet long; (6) a proposed transmission line 500 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 500 MWh. The project energy would be sold to Consumers Power.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

9 a. Type of Application: Conduit Exemption.

b. Project No.: 9922–001.

c. Date Filed: August 25, 1986.

d. Applicant: City of Boulder, Colorado.

e. Name of Project: Lakewood.

f. Location: Lakewood Pipeline, City of Boulder, Boulder County, Colorado.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person:

Ms. Eva J. Heinrich, City of Boulder, P.O. Box 791, Boulder, CO 80306, (303) 441–3205

Mr. Bob Looper, HDR Infrastructure, Inc., 1100 Capitol Life Center, Denver, CO 80203, (303) 861–1300.

i. Comment Date: December 15, 1986.

j. Description of Project: The proposed project would consist of: (1) a new flow control valve vault and surge tank at Sugarloaf Saddle; and, (2) a concrete powerhouse located adjacent to the Betasso Water Treatment Plant, housing a single horizontal Pelton turbine-generator unit with an installed capacity of 1,500 kW, operating under a head of 1,120 feet and a hydraulic capacity of 18 cfs, and producing an estimated average annual generation of 9.8 GWh. A 200-foot-long, 4.16-kV buried transmission cable would connect the project with the existing switchyard for the Betasso Water Power Project FERC No. 6282–001. The applicant intends to sell the project power to the Public Service Company of Colorado.

The proposed project would be constructed in conjunction with the applicant's municipal water distribution system maintenance program which consists of replacement of approximately 20,400 feet of the lower Lakewood Pipeline, from Sugarloaf Saddle to the Betasso Water Treatment Plant, with 24-inch diameter pipe.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

10 a. Type of Application: Small Conduit Exemption.

b. Project No.: 9983–000.

c. Date Filed: April 23, 1986.

d. Applicant: City of Pittsfield.

e. Name of Project: Ashley Reservoir Hydroelectric Power Plant.

f. Location: On Ashley Treatment Plant Site, Town of Washington, Berkshire County, Massachusetts.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Mr. William L. Forestell, Commissioner, Department of Public Utilities, City of Pittsfield, 70 Allen Street, Pittsfield, MA 01201, (413) 499–9330.

i. Comment Date: December 15, 1986.

j. Description of Project: The proposed project would be located on the 24-inch-diameter water supply conduit from Farnham Reservoir to Ashley Reservoir and would consist of: (1) an existing 24-inch-diameter gate valve serving as an inlet to the water supply line; (2) a new 24-inch by 16-inch reducer; (3) a 16-inch-diameter, 10-foot-long pipelines; (4) a concrete powerhouse containing one vertical turbine-generator unit with rated capacity of 225 kW at a head of 285 feet; (5) a 20-foot-long transmission line connecting to an existing line. The estimated average annual energy production would be 715,000 kWh.

k. Purpose of Project: The project power would be utilized by the Applicant:

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 10045–000.

c. Date Filed: July 21, 1986.

d. Applicant: City of Orofino.

e. Name of Project: Orofino No. 1 Hydroelectric Project.

f. Location: On the North Fork Clearwater River adjacent to the town of Ahsahka, Clearwater County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Honorable Henry L. Clay, Mayor, City of Orofino, P.O. Box 312, Orofino, ID 83544, (208) 476–4725.

i. Comment Date: January 5, 1987.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Dworshak Dam and Reservoir and would consist of: (1) bifurcating the fish hatchery water

supply lines to divert water through two new penstocks each 30 feet long and two feet in diameter leading to; (2) two new powerhouses each containing a single turbine/generator unit with an installed capacity of 800 kW operating between 260 and 500 feet of hydraulic head; and (3) a new 115-kV transmission line approximately one-quarter-mile-long. Total installed capacity will be 1,600 kW. The applicant estimates that the average annual energy generation would be 3,100 MWh and that the cost of the work to be performed under the preliminary permit would be $50,000.

k. Purpose of Project: The applicant intends to sell the power generated at the proposed facilities to Clearwater Power Company, Washington Power Company, or Bonneville Power Administration.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, & D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 10109–000.

c. Date Filed: October 1, 1986.

d. Applicant: Lock and Dam No. 24 Associates.

e. Name Project: Clarksville Hydro.

f. Location: On the Mississippi River in Pike County, Missouri and Calhoun County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jordan R. Walker, 484 East 300 North, Manti, UT 84642, Phone Number (801) 835–0202.

i. Comment Date: January 5, 1987.

j. Description of Project: The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) a proposed inlet channel; (2) a proposed powerhouse containing two generating units rated at 18 MW each; (3) a proposed outlet channel; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy output is 175,000,000 kWh. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $85,000.

k. Purpose of Project: Energy produced at the project would be sold to the local power company or the local municipalities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 10110–000.

c. Date Filed: October 1, 1986.

d. Applicant: Lock and Dam No. 25 Associates.

e. Name Project: Winfield Hydro.

f. Location: On the Mississippi River in Calhoun County, Illinois and Lincoln County, Missouri.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jordan R. Walker, 484 East 300 North, Manti, UT 84642.

i. Comment Date: January 5, 1987.

j. Description of Project: The applicant proposes to utilize an existing dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) a proposed inlet channel; (2) a proposed powerhouse containing two generating units rated at 18 MW each; (3) a proposed outlet channel; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy output is 175,000,000 kWh. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $85,000.

k. Purpose of Project: Energy produced at the project would be sold to the local power company or the local municipalities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.

14 a. Type of Application: New License.

b. Project No.: 1333–001.

c. Date Filed: February 26, 1986.

d. Applicant: Pacific Gas and Electric Company.

e. Name of Project: Tule River Water Power Project.

f. Location: On Tule River, Hossack Creek, and Doyal Springs in Tulare County, California: Sections 7 & 8, T20S, R31E; Sections 13, 14, 23, 24, 26, 27, 28, 29, & 32, T20S, R30E; section 6, T21S, R30E: MDB & M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Stephen P. Reynolds, Vice President, Rates, Pacific Gas and Electric Company, 77 Beale Street, Room 1065, San Francisco, CA 94106.

i. Comment Date: January 19, 1987.

j. Description of Project: The existing project involves lands in the Sequoia National Forest and consists of: (1) Tule River Diversion Dam, 6 feet high and 98 feet long, diverting water into the Tule River Conduit; (2) Hossack Creek Diversion Dam, 7.5 feet high and 17 feet long, diverting water through a 12-inch-diameter, 98-foot-long pipe and a 12-inch by 13-inch, eight-foot-long flume into the Tule River Conduit; (3) Doyal Springs Diversion Dam, 4 feet high and 70 feet long, with the Wishon plant pumping water through an 18-inch-diameter, 1,250-foot-long pipe into the Tule River Conduit; (4) Tule River Conduit, 3.2 miles long, consisting of an open channel, tunnel, and pipe connecting to a surge tank; (5) Tule River Penstock, with diameter varying between 30 inches to 48 inches and length of 3,600 feet; (6) Tule River Powerhouse with an installed capacity of 6.4 MW to be upgraded to 7.9 MW, under a gross head of 1,544 feet; (7) a tailrace returning flow to the Tule River; (8) a 70-kV transmission line, 15.27 miles long; and (9) appurtenant facilities. The Applicant estimates that the present average annual energy output of 28.4 GWh will be increased to 31.8 GWh.

k. Purpose of Project: Project energy will continue to be utilized by the Applicant.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 10116–000.

c. Date Filed: October 6, 1986.

d. Applicant: Triple Star Hydro Limited.

e. Name of Projects: North County Hydroelectric Project.

f. Location: On Eagle Creek, near town of Trinity Center, within the Shasta-Trinity National Forest, in Trinity County, California (In sections 7, 8, 9, 16 and 17 of T38N, R7W, MDB&M).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Dr. Roy McDonald, P.O. Box 11154, Beverly Hills, CA 90213–4154.

i. Comment Date: January 15, 1987.

j. Description of Project: The proposed project would consist of: (1) a 5-foot-high, 100-foot-long diversion dam at elevation 3,800 feet msl; (2) a 4-foot-diameter, 12,000-foot-long diversion pipeline; (3) a 3-foot-diameter, 3,000-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 5,200 kW operating under a head of 1,085 feet; and (5) a 0.1-mile-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Gas and Electric Company (PG&E) transmission line. The applicant estimates the average annual energy generation at 15.2 GWh to be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

Standard Paragraphs:

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing

development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period,

that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of the exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: November 13, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-25986 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-38-000 etc.]

Natural Gas Certificate Filings; Northwest Pipeline Corporation et al.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP87-38-000]

November 6, 1986

Take notice that on October 27, 1986, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-38-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that under the blanket authorization issued to Northwest in Docket No. CP82-433-000, Northwest be authorized to construct and operate certain natural gas facilities and to reassign gas volumes to facilitate sales and deliveries of natural gas to The Washington Natural Gas Company (WNG), an existing customer of Northwest's; all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that pursuant to requests by WNG, Northwest and WNG entered into letter agreements dated July 11, 1986 and September 15, 1986, which requested that Northwest provide additional service through the existing Lake Stevens Meter Station and the Little Rock sales tap. The Lake Stevens Meter Station is located adjacent to Northwest's 26-inch Ignacio-Sumas mainline in Snohomish County, Washington. The Little Rock tap is located adjacent to Northwest's 10¾" Olympia-Shelton Lateral in Thurston County, Washington.

It is stated that the additional natural gas service proposed to be provided through these two points will be utilized in serving the increased residential and commercial demand which has developed since the original construction of the sales points in the mid 1960's.

Northwest asserts that WNG has agreed to pay for all direct construction costs associated with the modification of the two meter stations excluding any Northwest labor charges. Northwest estimates that the total direct cost of the proposed construction will be approximately $104,900.

Northwest avers that the Lake Stevens Meter Station was constructed pursuant to the authorizations granted in Docket No. CP63-627. Northwest states that it is currently authorized to sell and deliver 1,500 dt equivalent of natural gas per day to WNG at Lake Stevens and environs delivery point pursuant to a Service Agreement dated March 15, 1986, providing for service under Northwest's Rate Schedule ODL-1. Northwest avers that the Little Rock sales tap was constructed pursuant to the authorizations granted in Docket No. CP67-54. Northwest states that its current deliveries at Little Rock are made pursuant to Northwest's authorization to sell and deliver natural gas volumes to WNG at the Seattle-Tacoma and environs delivery points pursuant to the aforementioned ODL-1 Service Agreement.

Northwest asserts that it intends to provide additional firm service to the two meter stations by utilizing existing quantities of natural gas heretofore authorized for sale and delivery under Rate Schedule ODL-1 to WNG at the North Seattle and Everett Meter Station located in Kipsap County, Washington. The reassigned natural gas service which Northwest proposes to provide at the three affected meter stations is set forth in the notice on file with the Commission.

Northwest asserts that no increase in the total daily contract quantity of natural gas which it is authorized to sell and deliver to WNG is proposed, nor will any such increase result from the grant of authorization sought herein.

Northwest avers that the proposed sales will be made by utilizing its currently existing system capacity and that Northwest has sufficient capacity to provide for the proposed deliveries without any detriment or disadvantage to any of Northwest's existing customers.

Comment date: December 22, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Freeport Interstate Pipeline Company

[Docket No. CP85-874-001]

November 7, 1986.

Take notice that on October 28, 1986, Freeport Interstate Pipeline Company (Freeport Interstate), P.O. Box 61520, New Orleans, Louisiana 70161, filed in Docket No. CP85-874-001 a petition to amend the order issued January 17, 1986 (34 FERC ¶ 61,030), in Docket No. CP85-874-000, pursuant to Section 7(c) of the Natural Gas Act so as to authorize it to intermittently and temporarily cease operation of its pipeline for natural gas service and, during those periods, to instead operate the line for water transportation, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Freeport Interstate states that pursuant to a certificate of public convenience and necessity issued June 17, 1986 (34 FERC ¶ 61,030), it owns and operates the Caminada Pipeline, which is a single length of interstate natural gas pipeline, approximately 9 miles in length, which originates at the Grand Isle Base Facility of Freeport-McMoRan Resources Partners, Limited Partnership (FMRP, LP), which is located on Grand Isle in the Gulf of Mexico, offshore Jefferson Parish, Louisiana, and terminates at the inlet of the Caminada Sulphur Mine of FMRP, LP, which is located in the Gulf of Mexico, in the federal domain.

Freeport Interstate indicates that FMRP, LP has requested that, during intermittent periods, it temporarily make available the subject line, which is lined with cement and resistant to water corrosion, for the transportation of fresh water from the Grand Isle Base Facility to the Caminada Sulphur Mine. FMRP, LP explained that a change in the method and pace of the mining operations at the Caminada Sulphur Mine now intermittently requires the temporary use of increased volumes of fresh water in order to efficiently operate the mine, including the continued efficient utilization of natural gas. FMRP, LP further explained that only commercially practical means of transporting the needed volumes of water to the mine is by pipeline and by intermittent and temporary use of the subject cement-lined line for that purpose. Accordingly, Freeport Interstate states that FMRP, LP petitioned it, upon request from time to time, to intermittently and temporarily cease operation of the subject line for natural gas service and, during those requested periods, to instead operate the line for water-supply transportation service to the Caminada Sulphur Mine.

Freeport Interstate States that the certificate amendment proposed in this application is required to comply with the customer's request to provide natural gas service on a basis compatible with the efficient utilization of natural gas at the mine. Freeport Interstate further states that, since the presently certificated service performed by Freeport Interstate by means of the subject line is interruptible, Freeport Interstate's implementation of the subject proposal would be entirely consistent with Freeport Interstate's certificated service obligation and, therefore, would not entail any diminishment of its service obligation. For that reason and for the reason that the customer's requested cessation by Freeport Interstate of natural gas service through the subject line is not on a permanent basis, but is only for intermittent and temporary periods, Freeport Interstate further states that there would be no abandonment of the subject line pursuant to section 7(b) of the Natural Gas Act.

Comment date: November 26, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Granite State Gas Transmission, Inc.

[Docket No. CP87-39-000]

November 7, 1986.

Take notice that on October 27, 1986, Granite State Gas Transmission, Inc. (Applicant), 120 Royall Street, Canton, Massachusetts 02021 filed in Docket No. CP87-39-000 an application pursuant to section 7(b) section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to acquire, construct and operate natural gas pipeline facilities as extensions of its existing system to be utilized to import natural gas from Canada for system supply to increase its jurisdictional sales of natural gas and for pregranted abandonment of certain proposed operations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has executed a Gas Sale Contract with Shell Canada Limited (Shell) for the purchase of up to 25 billion Btu of firm natural gas daily, and an additional 15 billion Btu daily on an interruptible basis, which would be delivered by Shell to Applicant at the United States-Canadian Border at a point near Highwater, Quebec, and North Troy, Vermont. Applicant requests the necessary authorizations to extend its existing system and operations to take delivery of the Shell gas at the border.

Applicant's existing pipeline extends to a terminus at Eliot, Maine, where it connects with an 8-inch line owned by Northern Utilities, Inc. (Northern Utilities). Northern Utilities' 8-inch line extends approximately 48 miles along the Maine coastal area to the vicinity of Portland, Maine. Applicant requests certificate authority to acquire by purchase, and operate the 48 miles of 8-inch Northern Utilities line from Eliot to the vicinity of Portland.

Applicant further states that Portland Pipe Line Corporation (Portland Pipe Line) owns an existing 18-inch common carrier crude oil pipeline that extends approximately 166 miles from a receiving terminal on the coast at South Portland, Maine, through Maine, New Hampshire and Vermont to a point on the United States-Canadian border near North Troy, Vermont, and Highwater, Quebec. North of the border, the 19-inch line continues, under ownership of Montreal Pipe Line Limited (Montreal Pipe Line), another 70 miles of refineries in Montreal, Quebec, according to Applicant. Applicant states that the 18-inch pipeline is not currently required for oil transportation service, and it is in a present condition suitable for conversion to natural gas transportation. Applicant proposes to lease the 18-inch line on the United States side from Portland Pipe Line and requests certificate authority to convert it and operate it in natural gas transportation service and, further, to construct and operate a connection between the leased line and the 8-inch line acquired from Northern Utilities where the lines cross near Portland, Maine.

It is further stated that the Canadian section of the 18-inch oil pipeline would be leased from Montreal Pipe Line by Shell Canada Products limited and also converted to natural gas service. The Canadian section of the converted line would be interconnected with the gas pipeline facilities of Gaz Metropolitian, Inc., in the Province of Quebec, which are already connected to the TransCanada PipeLines Ltd. system.

Applicant states that it expects to complete conversion of the 18-inch line, the acquisition of the 8-inch line from Northern Utilities and related construction of interconnections by November 1, 1987, and that deliveries by Shell through the delivery system in Canada to the border can then commence on an interruptible basis. Firm deliveries at the level of 25 billion Btu a day are projected to commence on November 1, 1988, according to Applicant.

Applicant further states that the lease of the converted line has a primary term extending from the earlier of first deliveries by Shell, or November 1, 1988, to March 31, 1999, and Portland Pipe Line has reversed the option to terminate the lease on March 31, 1996, March 31, 1997, and March 31, 1998, on two years and five months' notice before each of such dates, in the event that reconversion of the 18-inch line to oil transportation service is required. In recognition of the options to terminate, Applicant requests pregranted abandonment of its operation of the 18-inch line in natural gas service on March 31, 1996. Applicant states that, in the event of early termination of the lease, it would have alternate methods of supplying the gas transported through the converted pipeline.

Applicant states that during the period while interruptible deliveries are being made, Portland Pipe Line would receive, as rental, 24 cents per million Btu, on all gas received at the border and transported through the 18-inch line. When firm service commences, Applicant would pay Portland Pipe Line a monthly rental of $136,666.67 (U.S.), plus 6 cents per Mcf on all gas transported through the converted line, it is stated.

According to Applicant, the estimated cost of acquiring the approximately 48 miles of 8-inch line from Northern Utilities, the cost of converting the 18-inch oil pipeline to natural gas service and the cost of constructing

interconnections, metering and appurtenant facilities is $5,844,500. Temporary financing would be provided by a short-term bank loan which would be replaced by permanent financing in the form of a long-term loan of $3,500,000 and an equity contribution from Applicant's parent, Northern Utilities, of $2,600,000, Applicant states.

Applicant states that it has filed an application with the Economic Regulatory Administration at Docket No. 86–43–NG for authority pursuant to section 3 of the Natural Gas Act to import natural gas from Canada purchased under the Gas Sales Contract with Shell. Shell, it is stated, would be responsible for the arrangements in Canada for transporting the gas from the producing area to the delivery point to Applicant at the border.

The Gas Sale Contract provides for a two-part demand and commodity pricing structure when firm deliveries commence and a single commodity rate during the period of interruptible service preceding firm deliveries, according to Applicant. Applicant states that the demand component after firm deliveries commence would consist of the sum of the fixed costs incurred by Shell for the transportation of the gas from Alberta to the border delivery point and that the commodity charge is a function of an adjusted border price, minus the demand charge. Applicant states that the border price is subject to adjustment monthly according to a formula that is designed to make the price of the Shell gas continuously responsive over the life of the contract to the competitive prices of alternative fuels and domestic gas supplies available in Applicant's market in Maine, New Hampshire and Massachusetts. According to Applicant, a base border price of $3.31 per million Btu has been established in the contract which would be adjusted monthly through a formula based on a market basket of competitive alternatives: No. 2 fuel oil, No. 6 fuel oil, both high and low sulphur, and the weighted average cost of Applicant's other available firm natural gas supplies.

Applicant proposes to passthrough the purchase cost of the Shell gas in its rates on an "as-billed" basis and Applicant requests that it be relieved of the reduced purchased gas costs requirements of the incremental pricing provisions of Part 282 of the Commission's Regulations insofar as such provisions might be applicable to its purchases from Shell.

Applicant states that the Shell supply is being acquired for system supply to meet the growing requirements of its customers' markets and can be absorbed by the markets without displacing Applicant's existing long-term supplies.

Comment date: November 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP87–41–000]

November 7, 1986.

Take notice that on October 28, 1986, Northern Natural Gas Company, a Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–41–000, a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authority to construct a delivery point and appurtenant facilities to accommodate natural gas deliveries to Minnegasco, Inc. (Minnegasco), a local distributor in the State of Minnesota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northern states that it seeks authority ot construct a small-volume delivery point to accommodate natural gas deliveries to the community of Credit River Township, Scott County, Minnesota, a resale customer of Minnegasco. Northern states that the approximate total quantity to be deivered to Minnegasco at the subject delivery point would be 13 Mcf on a peak day and 1,950 Mcf on an annual basis. The total cost to construct the proposed facilities is estimated to be $4,919. Northern advises that Minnegasco would be required to contribute $4,032 in aid of construction.

Comment date: December 22, 1986, in accordance with Standard Paragraph G at the end of this notice.

5. Granite State Gas Transmission, Inc.

[Docket No. CP87–40–000]

November 7, 1986.

Take notice that on October 27, 1986, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 filed in Docket No. CP87–40–000 an application pursuant to § 153.10 of the Commission's Regulations for a Presidential Permit for the construction, operation, maintenance, and connection of facilities at the United States-Canadian international border near North Troy, Vermont, and Highwater, Quebec, for the importation of natural gas all as more fully set forth in the application on file with the Commission and open to public inspection.

Concurrently therewith, Granite State filed an application in Docket No. CP87–39–000 for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act seeking authority to lease, acquire, construct and operate the necessary natural gas pipeline facilitues to enable Granite State to import natural gas from Canada and to resell the imported gas in its market areas in Maine, New Hampshire, and Massachusetts.

Comment date: November 26, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Northern Border Pipeline Company

[Docket No. CP86–395–001]

November 7, 1986.

Take notice that on October 15, 1986, Northern Border Pipeline Company (Applicant), 2600 Dodge Street, Omaha, Nebraska 68131, filed in Docket No. CP86–395–001 a petition, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) and section 7(c) of the Natural Gas Act, seeking a limited-term waiver of §§ 284.7 and 284.8 of the Commission's Regulation promulgated under Order No. 436, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Applicant seeks waiver of those provisions of the Commission's Regulations which require that rates for transportation service rendered under Subpart G of Part 157 of the Regulations be volume-tric and designed on the basis of projected units of service. Applicant asserts that since the Commission's September 16, 1986 order in Docket No. CP86–395–000, which scheduled a technical conference to consider Applicant's application for a blanket certificate (*Northern Border Pipeline Company*), 36 FERC¶ 61,283 (1986)), it has received several written, as well as oral, requests from potential shippers for the transportation of gas through Applicant's pipeline system. Applicant claims that a waiver is necessary in order to permit it to transport gas, pending further action by the Commission after the conclusion of the technical conference, above.

Applicant avers that it meets the Commission's standards for waiver of §§ 284.7 and 284.8 of the Regulations, as these standards were articulated in a June 27, 1986 order issued to Texas Eastern Transmission Corporation in Docket No. RP86–110–000 (*Texas Eastern Transmission Corporation*, 35 FERC ¶ 61,405 (1986)). Applicant requests that a waiver issue, to continue through the earlier of March 1, 1987 or 30 days after the effective date of any final

Commission order in Docket No. CP86–395–000.

Comment date: November 26, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Panhandle Eastern Pipe Line Company and Trunkline Gas Company

[Docket No. CP87–15–000]

November 10, 1986.

Take notice that on October 9, 1986, Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline), hereinafter jointly referred to as Applicants, P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87–15–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon a transportation service to Mississippi River Transmission Corporation (MRT), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants explain that the partial abandonment would render a reduction of the firm transportation quantity of natural gas from 13,500 Mcf per day to 6,750 Mcf per day.

Panhandle and Trunkline provide service to MRT pursuant to Rate Schedules T–38 and T–60, respectively, it is explained.

Comment date: December 1, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Pacific Gas Transmission Company

[Docket No. CP87–21–000]

November 10, 1986.

Take notice that on October 14, 1986, as supplemented November 3, 1986, Pacific Gas Transmission Company (Applicant), 160 Spear Street, San Francisco, California 94105–1570, filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the interruptible transportation of natural gas in interstate commerce; and (2) pregranted abandonment authorization upon termination of the transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the transportation would be accomplished by means of a delivery to Applicant at Kingsgate, British Columbia, of up to 338,900 Mcf of natural gas per day for the account of Salmon Resources Ltd. (Salmon), and the redelivery of such natural gas to Salmon at a points of interconnection between the pipeline systems of Applicant and the Washington Water Power Company at Starr Road near Spokane, Washington, and Pacific Gas and Electric Company at Malin, Oregon. Applicant states that the proposed maximum daily quantities at the proposed delivery points at Starr Road and Marlin, Oregon, are to be 31,130 Mcf and 307,600 Mcf of natural gas per day, respectively. Applicant further states that the interruptible transportation service would be accomplished through the utilization of existing capacity available on applicant's system. It is alleged that the term of the agreement would be for a primary term of 90 days, not to exceed one year.

It is further stated that Applicant also seeks pregranted abandonment authorization to terminate service upon termination of the transportation agreement.

Comment date: December 1, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. Natural Gas Pipeline Company of America

[Docket No. CP87–35–000]

November 10, 1986.

Take notice that on October 24, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, P.O. Box 1208, Lombard, Illinois 60148, filed in Docket No. CP87–35–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Natural (1) to transport on an interruptible basis natural gas under a gas transportation agreement with MidVen Pipeline Company (MidVen), (2) to retain and operate existing facilities, and (3) to add and delete receipt points for the transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that on June 25, 1986, Natural entered into a gas transportation agreement with MidVen to provide on an interruptable basis transportation of up to 60 billion Btu equivalent of natural gas per day for MidVen for a period of ten years from date of first delivery and month-to-month thereafter until cancelled. Natural requests authorization to transport up to 60 billion Btu equivalent of natural gas per day on an interruptible basis to the agreement.

Natural lists existing receipt points in Nacogdoches, Cass and Nueces Counties, Texas. Natural would redeliver volumes of gas for MidVen's account at existing points of interconnection between Natural and MidVen in Cass and Kleberg Counties, Texas. Natural states that the above existing points were originally constructed to provide transportation under section 311 of the Natural Gas Policy Act of 1978 only, and so were non-jurisdictional. Natural requests certificate authorization to retain and operate the facilities for the purpose of the transportation proposed herein.

Natural proposes to charge MidVen a transportation rate consistent with its maximum rate levels under Rate Schedule TRT–1, effective July 1, 1986, ranging from 1.0 cent to 17.3 cents per million Btu equivalent depending on the receipt and delivery points used. Natural also proposes to charge MidVen the currently effective GR1 surcharge, if required.

Natural further requests authorization to add and delete receipt points as required to support the transportation service. The construction of such receipt points added to implement the arrangement would be done under Natural's blanket authorization in Docket No. CP82–402–000.

Comment date: December 1, 1986, in accordance with Standard Paragraph F at the end of this notice.

10. Colorado Interstate Gas Company

[Docket No. CP87–36–000]

November 10, 1986.

Take notice that on October 24, 1986, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP87–36–000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and nesessity authorizing the reduction, at CIG's option, of the general daily entitlement of natural gas sold by CIG to Natural Gas Pipeline Company of America (NGPL) during the period from December 1 through the last day of February (swing period) for each year during the term of the service agreement with NGPL, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that on June 26, 1986, it executed a service agreement with NGPL incorporating a general daily entitlement of 130,000 Mcf of natural gas per day, as authorized by the Commission's order issued September 30, 1985, in Docket No. CP85–381–000. CIG further states that the service agreement reestablishes the provision for a swing period reduction from 130,000 Mcf of natural gas per day to 90,000 Mcf of natural gas per day commencing with the 1986–1987 heating season. CIG asserts that the option to reduce deliveries to NGPL during the

winter heating season allows CIG to obtain additonal peak day and general heating season gas volumes if needed. No change in the Total Annual Entitlement to volume for NGPL is proposed in the instant application.

CIG requests that the authority sought in the instant application be issued on or before December 1, 1986, in order that the swing period reduction may, if necessary, be utilized during the 1986–87 heating season.

Comment date: December 1, 1986, in accordance with Standard Paragraph F at the end of this notice.

11. Algonguin Gas Transmission Company

[Docket No. CP86–189–003]

November 10, 1986.

Take notice that on October 31, 1986, Algonquin Gas Transmission Company (Petitioner), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP86–189–003 a petition to amend the Commission's order issued on December 24, 1985, pursuant to section 7(c) of the Natural Gas Act so as to authorize Petitioner to extend a limited-term transportation service with pre-granted abandonment for Commonwealth Gas Company (Commonwealth) until February 13, 1987, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that Commonwealth has requested it to provide firm transportation service for natural gas supplies that Commonwealth has acquired from Boston Gas Company (Boston Gas) to meet expected peak service requirements in place of synthesized natural gas supplies during the period December 23, 1986, through February 13, 1987. Petitioner avers that the requested service is similiar to the transportation service which was authorized by the Commission by the order of December 24, 1985, and which expired on February 16, 1986, for Commonwealth. Therefore, Petitioner requests authority to transport by displacement, through existing facilities and receipt/delivery points with Boston Gas and Commonwealth, a maximum transportation quantity of up to 5 billion Btu equivalent of natural gas per day, with a total maximum quantity for the full period of 260,576 billion Btu equivalent of natural gas. Petitioner states that it intends to render such transportation services to Commonwealth pursuant to revised Rate Schedule X–29 in Petitioner's FERC Gas Tariff Original Volume No. 2, for a limited-term starting the later of December 23, 1986, or upon the date Petitioner accepts the certificate authorizing the extension of the service, with pre-granted authority to abandon the transportation service as of February 13, 1987. Petitioner proposes to charge a transportation rate of .01474 cents per billion Btu equivalent of natural gas transported, which charge is the established rate charged by Petitioner for Rate Schedule X–29 transportation service.

Comment date: December 1, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commisson will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–25942 Filed 11–17–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA83–2–31–008]

Arkla Energy Resources, a division of Arkla, Inc.; Petition for Waiver

November 13, 1986.

Take notice that on November 6, 1986, Arkla Energy Resources ("AER"), a division of Arkla, Inc., P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. TA83–2–31, a petition for waiver of requirements imposed in that docket and implemented in AER's tariff, in order to permit AER more equitably and efficiently to refund the purchased gas cost portion of a 1983 minimum bill deficiency payment paid to AER by Northwest Central Pipe Line Corporation ("NWC"), all as more fully set forth in the petition that is on file with the Commission and open to public inspection.

AER requests that the Commission grant a waiver of AER's tariff to permit AER (a) to calculate the refund due its jurisdictional customers with respect to the purchase gas cost portion of NWC's 1983 minimum bill deficiency payment on the basis of AER's jurisdictional sales during the twelve-months ended December 31, 1983, and (b) to make a lump sum refund of the resulting amounts directly to those customers. AER states that the relief it requests is consistent with the expectations of all participants in a settlement reached in this docket and approved by the Commission on August 13, 1984. AER further asserts that the proposed period for calculating the refund is appropriate because it corresponds to the period during which NWC's minimum bill deficiency was incurred and before NWC's purchase patterns were altered in light of Commission Order No. 380–C. AER further states that its proposal will be administratively efficient and permit repayment of the refund promptly

following the termination of the period during which NWC is permitted to make up the minimum bill deficiency for which payment was made. AER states that it has discussed this proposal with its jurisdictional customers, who agree that the proposal provides for a more equitable method of accounting for the 1983 minimum bill deficiency payment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 20, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26004 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9521-001]

Lloyd Ladd; Surrender of Preliminary Permit

November 13, 1986.

Take notice that Lloyd Ladd, permittee for the Ladd Dam Project No. 9521 located on the China Lake Outlet Stream in Kennebec County, Maine, has requested that its preliminary permit be terminated. The preliminary permit was issued on April 25, 1986, and would have expired on March 31, 1989. The permittee states that analysis of the Ladd Dam Project did not indicate feasibility for development.

The permittee filed the request on October 24, 1986, and the preliminary permit for Project No. 9521 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26006 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-128-003]

Ohio River Pipeline Corp.; Proposed Changes in FERC Gas Tariff

November 13, 1986.

Take notice that on November 4, 1986, Ohio River Pipeline Corporation (Ohio River) tendered for filings the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Original Sheet No. 4
Substitute Original Sheet No. 5
Substitute Original Sheet No. 10
Second Substitute Original Sheet No. 11
Substitute Original Sheet No. 41
Substitute Original Sheet No. 42
Substitute Original Sheet No. 49

Ohio River states that these revised tariff sheets are being filed as a result of a technical conference held pursuant to the Commission's order dated June 30, 1986 in Docket No. RP86-128-000 and subsequent discussions between Ohio River and the Commission's Staff.

Ohio River requests waiver of all Commission rules and regulations, as necessary, to permit the tendered tariff sheets to become effective on July 1, 1986. A copy of this filing was provided to Indiana Gas Company, Inc., Ohio River's parent and sole sales customer.

Simultaneously with this filing, Ohio River has filed a Motion For A Determination That A Filing Fee Is Not Required Pursuant to 49 CFR 381.110 Or, In The Alternative, For Waiver Of Filing Fee Pursuant to 49 CFR 381.106.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 20, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26008 Filed 11-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-44-002]

Valero Interstate Transmission Co.; Tariff Filing

November 13, 1986

Take notice that on October 30, 1986, Valero Interstate Transmission Company (Vitco) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2:

Original Volume No. 1

3rd Revised Sheet No. 7
1st Revised Sheet Nos. 7.1 through 7.8
6th Revised Sheet No. 8
1st Revised Sheet Nos. 8.1 through 8.8
1st Revised Sheet No. 9.1
12th Revised Sheet No. 14
2nd Revised Sheet No. 14.2
1st Revised Sheet Nos. 22 through 29
Original Sheet Nos. 29.1 through 29.8
1st Revised Sheet Nos. 49 through 51
Original Sheet No. 51.1
2nd Revised Sheet Nos. 52 through 54
Original Sheet No. 54.1

Original Volume No. 2

1st Revised Sheet Nos. 1 and 2
7th Revised Sheet No. 6

Vitco states that these tariff sheets implement the July 16, 1986, "Stipulation and Agreement in Settlement of Rate Proceeding" which was approved October 3, 1986 by Commission letter order. Vitco further states that these tariff sheets are identical to those attached to the Stipulation and Agreement as modified for typographical errors by sheets filed with Vitco's August 11, 1986 Reply Comments. The tariff sheets contain as paragraph 5(k) of the General Terms and Conditions the "use-it-or-lose-it" provision for interruptible transportation service approved by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 20, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26010 Filed 11-17-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee.

Date and Time: Wednesday, December 3, 1986, 8:30 a.m.-5:00 p.m., Thursday, December 4, 1986, 8:30 a.m.-3:00 p.m.

Location: GA Technologies, Inc., Room No. T-120, 10955 John Jay Hopkins Drive, San Diego, California.

Contact: Thomas G. Finn, Office of Fusion Energy, Office of Energy Research, ER-50.2 U.S. Department of Energy, Mail Stop G-236, Washington, DC 20545, Phone: (301)-353-4941.

Purpose of the Committee

To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Agenda Outline

Wednesday, December 3, 1986—8:30 AM

1. Welcome—D. Overskei.
2. New Developments in International Cooperation—J. Clarke.
3. MFAC Report on the Technical Planning Activity Panel (TPA)—C. Baker and H. Weitzner.
4. MFAC Discussion on TPA Panel.

Lunch

5. MFAC Discussion on TPA Panel/ Public Comments.
6. Presentation on Fusion Materials Program—R. Conn and E. Bloom.
7. MFAC Report on Materials Charge—(Review of IEA Panel of Experts)—L. Berry.
8. MFAC Discussion.
9. Public Comments (10-minute rule).

Adjourn 5:00 PM

Thursday, December 4, 1986—8:30 AM

1. Report on ERAB Panel—R. Davidson.
2. MFAC Recommendations on TPA/ MFAC Comments/Public Comments.
3. MFAC Recommendations on IEA Materials Panel/MFAC Discussion/ Public Comments.
4. GA Presentation.

Lunch

5. GA Presentation.
6. Other Business.
7. Public Comments (10-minute rule).

Adjourn 3:00 PM

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Thomas G. Finn at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 13, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-26024 Filed 11-17-86; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1628]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

November 10, 1986.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: MTS and WATS Market Structure: Average Schedule Companies. (CC Docket No. 78-72, Phase I).

Number of petitions received: 4.

Subjects: Authorized Rate of Return for the Internstate Servcies of AT&T Communications and exchange Telephone Companies. (CC Docket No. 84-800, Phase III).

Number of petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26002 Filed 11-17-86; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 86-400]

Zip-Call, Inc., et al.

AGENCY: Federal Communications Commission (FCC).

ACTION: Order designating applications for hearing.

SUMMARY: This order designates five applications in the Public Land Mobile Radio Service for comparative hearing pursuant to § 22.33(c)(i) of the Federal Communication's Rules, 47 CFR 22.33(c)(i). Zip-Call, Inc., File No. 24404-CD-P/L-3-85, proposes to construct additional transmitting facilities for Station KCI297 to operate on frequency 454.175 MHz at Agamenticus Village, Portland and Saco, Maine. Marshall Communications Corporation, File Nos. 23126-CD-P/L-1-85, 228899-CD-P/L-1-85, proposed to establish facilities for Station KNKI563 on frequency 454.175 MHz at Auburn, Maine and for KNKI514 on frequency 454.175 MHz at Saco, Maine. Summit Mobile Radio Company, File Nos. 24440-CD-P/L-1-85, 24444-CD-P/L-1-85, proposes to establish facilities on frequency 454.175 MHz for Station KNKI893 at Androscoggin, Maine and for Station KNKI901 at Falmouth Township, Maine. The Commission finds that it is in the public interest to allow Zip-Call, Inc. the opportunity to prove that an additional location on its existing system will benefit the public more than will service proposed by the other applicants.

DATES: Within 20 days of the release date of this order, applicants must file a written notice of their intention to appear on the day of the hearing and to present evidence on the specified issues.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gerald Goldstein (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's designation order, pursuant to delegated authority; adopted October 14, 1986, and released October 29, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Kevin J. Kelley,

Deputy Chief, Domestic Facilities Division

[FR Doc. 86–26001 Filed 11–7–86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Revision of Information Collection 3067–0169

Title: Write Your Own (WYO) Program

Abstract: Under the Write Your Own Program, the Federal Insurance Administrator may enter into arrangements with private sector insurance companies to offer flood insurance coverage to eligible property owners. The Federal Government is a guarantor of flood insurance coverage for policies written under the Write Your Own Program. To insure that Federal funds are accounted for and appropriately expended, companies under the Write Your Own Program are required to submit monthly financial reports.

Type of respondents: Business and other for-profit

Number of respondents: 76

Burden hours: 456

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: November 5, 1986.

Wesley C. Moore,

Acting Director, Office of Administrative Support.

[FR Doc. 86–25944 Filed 11–17–86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

President's Advisory Committee on Mediation and Conciliation; Meeting

Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Advisory Committee on Mediation and Conciliation will be held on Tuesday, December 9, 1986 from 9:00 a.m. to 5:00 p.m. and Wednesday, December 10, 1986 from 9:00 a.m. to 5:00 p.m. in hearing room number 1 of the National Labor Relations Board, 11000 Wilshire Boulevard, 12th floor, Los Angeles, California 90024.

The purpose of the meeting is to obtain the views of representatives of labor and management, and other qualified individuals, with regard to labor-managment goals and objectives expected to be achieved within a period of five years. A hearing procedure will be followed in which the views of witnesses will be transcribed for the record.

The meeting will be open to the public. Interested persons may file written statements with the Committee, and subject to reasonable Committee procedures may also make oral statements on matters germane to subjects under consideration at the meeting.

Further information regarding this meeting may be obtained from Mr. Dennis R. Minshall, Executive Director, President's Advisory Committee on Mediation and Conciliation, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, or call (202) 653–5290.

Dated: November 12, 1986.

Duane M. Buckmaster

Deputy Director, Federal Mediation and Conciliation Service.

[FR Doc. 86–25923 Filed 11–17–86; 8:45 am]

BILLING CODE 6372-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85V–0498]

Approved Variance for Laserscope OMNIplus™ Surgical Laser System; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration, (FDA) is announcing that a variance for the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the Laserscope OMNIplus™ surgical laser system manufactured by Laserscope, Santa Clara, CA.

DATES: The variance became effective August 8, 1986, and terminates August 8, 1991.

ADDRESS: The application and all correspondence on the application have been placed in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Donovan, Center and Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted Laserscope, 3350 Scott Blvd., Bldg. 29, Santa Clara, CA 95054, a variance from § 1040.10(f)(5)(iii) (21 CFR 1040.10(f)(5)(iii)) of the performance standard for laser products for the Laserscope OMNIplus™ surgical laser system. The system is a pulsed solid state twin crystal laser used in a variety of surgical procedures (e.g., treatment of port wine stain and tattoos).

The specific requirements of the standard form which a variance has been granted pertains to the provision of § 1040.10(f)(5)(iii), which requires that after August 26, 1986, laser systems must include an emission indicator on each separately housed laser and on each operation control of a laser system if such laser or operation can be operated at a distance of greater than 2 meters from any separately housed portion of the laser product incorporating an emission indicator. All other provisions

of the performance standard remain applicable to the product.

CDRH has determined that (1) the requirement of § 1040.10(f)(5)(iii) is not appropriate for laser systems equipped with a line-of-sight cordless infrared remote control unit, and (2) suitable means of radiation safety and protection will be provided by the supplemental features and information provided to users. Therefore, on August 8, 1986, CDRH approved the requested variance by a letter to the manufacturer from the Deputy Director of CDRH.

To assure that the product shows evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: November 7, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–25936 Filed 11–17–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86P–0393]

Petition Requesting 10 Years' Exclusivity for Hydrocortisone Butyrate

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: In keeping with agency policy, the Food and Drug Administration (FDA) is announcing the filing of a petition requesting a period of 10 years' marketing exclusivity under section 505(j)(4)(D)(i) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 255(j)(4)(D)(i)) for hydrocortisone butyrate, a topical steroid drug. The agency previously has accorded hydrocortisone butyrate a period of 2 years' exclusivity under section 505(j)(4)(D)(v) of the act. FDA is giving notice of the filing of this petition to all interested persons because, should FDA decide to grant the petition, this decision may affect the date when approval for marketing of generic versions of hydrocortisone butyrate may be made effective.

DATE: Comments by December 18, 1986.

ADDRESS: Requests for a copy of the petition and written comments regarding the petition to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act of 1984. This act amends the Federal Food, Drug, and Cosmetic Act authorizing, among other things, the agency to accept abbreviated new drug applications (ANDA's) for most previously approved new drug products. This legislation also provides for extending the term of a patent which claims a product, use, or method of manufacture that was subject to a regulatory review period in accordance with the act. Further, this new legislation also provides for periods of exclusive marketing of certain new drug products submitted in an application (or a supplement to an application) under section 505(b) of the act. An ANDA or new drug application described in section 505(b)(2) of the act for such a drug may not be submitted (under some provisions) or made effective (under other provisions) until the period of "exclusive" marketing ends.

The new drug products that have been granted "exclusivity" under one of the several exclusivity provisions of this new legislation are set forth in the volume entitled "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations" (the list) and its monthly supplements. In addition, the period of exclusivity is shown.

The agency believes that all exclusivity information appearing in the list is correct, and expects that such information appearing in any future supplements to the list will also be correct. However, interested persons may disagree with the agency's findings and believe that FDA has excluded exclusivity information that should have been included, or included exclusivity information that should have been excluded. Accordingly, FDA has established a policy that, whenever an interested person submits a citizen petition requesting such inclusion or exclusion, the agency will publish a notice in the **Federal Register** of the availability of the petition. This publication is constructive notice to all interested persons that they may be affected by the petition and gives them an opportunity to submit their comments on the petition to the agency. Persons potentially affected include holders of approved ANDA's or approved new drug applications decribed in section 505(b)(2) the effective dates of which might be changed by a decision to grant the petition, persons who have pending ANDA's or new drug applications described in section 505(b)(2) or who contemplate submitting such applications that, when approved, would have effective dates that will be determined by the decision on the petition or, in some cases, persons whose right to submit such application may be affected.

Although the agency has made an initial determination that hydrocortisone butyrate is entitled only to 2 years' exclusivity, in accordance with the policy above, FDA is announcing a filing of a petition (86P–0393) submitted on behalf of Gist-Brocades that hydrocortisone butyrate be accorded 10 years' exclusivity. Gist-Brocades requests that FDA reconsider its determination on exclusivity for hydrocortisone butyrate. Gist-Brocades states that the drug should be accorded 10 years' exclusivity under section 505(j)(4)(D)(i) of the act.

FDA is reviewing the merits of this petition and, by this notice, is giving anyone who may be affected by this petition an opportunity to submit comments within 30 days.

Interested persons may, on or before December 18, 1986, submit to the Dockets Management Branch (address above) written comments on the petition. These comments will be considered in preparing an agency response to the petition. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the petition should be sent to the Docket Management Branch.

Dated: November 12, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-25935 Filed 11-17-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0430]

W.L. Gore & Associates, Inc.; Premarket Approval of GORE-TEX™ Cruciate Ligament Prosthesis

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by W.L. Gore & Associates, Inc., Flagstaff, AZ, for premarket approval, under the Medical Device Amendments of 1976, of the GORE-TEX™ Cruciate Ligament Prosthesis. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petition for administrative review by December 18, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nirmal K. Mishra, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7156.

SUPPLEMENTARY INFORMATION: On October 4, 1985, W.L. Gore & Associates, Inc., Flagstaff, AZ 86001, submitted to CDRH an application for premarket approval of the GORE-TEX™ Cruciate Ligament Prosthesis. The device is a prosthetic ligament fabricated from expanded polytetrafluoroethylene. It is implanted through single femoral and tibial tunnels, and fixed in place with stainless steel bone screws placed through the eyelets and the adjacent and opposite cortices. The device is indicated for use as a permanent replacement for the anterior cruciate ligament of the knee in those patients who have had at least one failed autogenous, intraarticular reconstruction of their anterior cruciate ligament.

On June 19, 1986, the Orthopedic Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 10, 1986 CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Docket Management Branch (address above) and is available from that office upon written request. Request should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nirmal K. Mishra (HFZ-410), address above.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 18, 1986, file with the Docket Management Branch (address above) two copies of each petition and supporting data and information, identifed with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 7, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-25937 Filed 11-7-86; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Ophthalmic Devices Panel

Date, time, and place. December 4, 2 p.m., Conference Rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open public hearing, 2 p.m. to 2:15 p.m.; open committee discussion, 2:15 p.m. to 5 p.m. Dr. Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave. Silver Spring, MD 20910, 301, 301-427-7320.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their

regulation. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 1, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss "Me Too" criteria for panel review of premarket approval applications (PMA's) and the issue of overnight swelling response in extended wear contact lens patients. The committee may also discuss general issues relating to other ophthalmic devices.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), RM. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: November 14, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–26080 Filed 11–14–86; 2:36 am]

BILLING CODE 4160–01–M

Public Health Service

National Committee on Vital and Health Statistics, Subcommittee on Disease Classification and Automated Coding of Medical Diagnoses; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Subcommittee on Disease Classification and Automated Coding of Medical Diagnoses of the National Committee on Vital and Health Statistics (NCVHS) established persuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Monday, December 2, 1986 at 9:00 a.m. in Room 403A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will receive presentations from the National Center for Health Statistics on the current status of the Tenth Revision to the International Classification of Diseases (ICD–10). The meeting will also provide a forum for interested parties to express their views.

Further information regarding this meeting of the subcommittee may be obtained by contacting Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2–28, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: November 14, 1986.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 86–26091 Filed 11–17–86; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Wisconsin Winnebago Tribe; Establishment of Reservation

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Notice is hereby given that, under the authority of section 7 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), the herinafter described land, located in Jackson, Juneau, Sauk, Wood, Monroe, Shawano and Dane Counties, Wisconsin, was proclaimed an addition to the Wisconsin Winnebago Indian Reservation, effective November 4, 1986, for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservation.

4th Principal Meridian

Jackson County

Parcel 1

A parcel of land located in part of the Northeast Quarter of the Northeast Quarter, the Southeast Quarter of the Northeast Quarter, the Southwest Quarter of the Northeast Quarter, and the Northwest Quarter of the Southeast Quarter, all located in Section 5, Township 21 North, Range 3 West, Town of Brockway, Jackson County, Wisconsin, more particularly described as follows: The Northeast Quarter of the Northeast Quarter, excepting the West 10 acres (Volume 180 of Records, page 47); and all that part of the Southeast Quarter of the Northeast Quarter, and the Southwest Quarter of the Northeast Quarter, and the Northwest Quarter of the Southeast Quarter

lying North of the Northwesterly right-of-way line of Highway "54" as presently located, excepting a strip of land 100 feet in width lying North and parallel and adjacent to said Northwesterly right-of-way line of Highway "54". Said parcel contains 94.71 acres of land, more or less, together with the following roadway easement: A parcel of land located in the Southeast Quarter of the Northeast Quarter and the Southwest Quarter of the Northeast Quarter, Section 5, Township 21 North, Range 3 West, Town of Brockway, Jackson County, Wisconsin, described as follows: Commencing at the Southwest corner of the Southeast Quarter of the Northeast Quarter of Section 5, Township 21 North, Range 3 West; thence North 04°53'30" West along the forty line, 159.01 feet to the Northerwestly right-of-way (R/W) line of S.T.H. "54"; thence North 50°56'37" East along said R/W line, 11.35 feet to the point of beginning and the Southwesterly corner of the 66 foot roadway through 100 foot strip; thence continuing North 50°56'37" East along said Northwesterly R/W line of S.T.H. "54", 66.00 feet; thence North 38° 29' West perpendicular to the centerline of S.T.H. "54", 100.00 feet; thence South 50°56'37" West parallel to said S.T.H. "54" R/W line, 66.00 feet; thence 38° 29' East perpendicular to said centerline of S.T.H. "54", 100.00 feet to the point of beginning.

Jackson County

Parcel 2

The SW¼SW¼ Sec. 28, T. 22 N., R. 3W., except that part described as follows:

Beginning at the SW corner of the aforesaid quarter-quarter, thence N. on the W. line thereof 600 feet, thence E. parallel with the South line of said quarter-quarter 340 ft., thence South parallel with the West line 260 ft., thence West parallel with the South line of said quarter-quarter 290 ft., thence South parallel with the West line 340 ft. to the South line, thence West on said line 50 ft. to the point of beginning, and containing approximately 2.42 acres of land.

Parcel 3

SW¼NE¼ Sec. 24, T. 21 N, R. 2 W.

Parcel 4

NE¼SW¼ Sec. 28 T. 22 N., R. 3 W., minerals reserved.

Parcel 5

S½S½SW¼NE¼ Sec. 28, T. 22 N., R. 3 W.

Parcel 6

S½NW¼ and NW¼NW¼ Sec. 33, T. 22 N., R. 3 W., excepting therefrom approximately 17 acres described as follows: Beginning at the SE corner of T. 22 N., R. 3 W., Sec. 33, NW¼NW¼, thence West a distance of 950 feet, thence North a distance of 782 feet, thence East a distance of 950 feet, thence South a distance of 782 feet to the place of beginning.

Parcel 7

A parcel of land located in the Town of Komensky, more particularly described as follows:

Commencing at the SW corner of the NE¼NW¼, thence running north on the Eighth line 13 rods, thence running East 13 rods, thence running South 13 rods to the Eighth line, thence running West on the Eighth line 13 rods, to the place of beginning of Sec. 33, T. 22 N., R. 3 W.

Parcel 8

The NE¼NW¼ Sec. 33, T. 22 N., R. 3 W., excepting therefrom 1-acre described as follows:

Commencing at the SW corner of NE¼NW¼ Sec. 33, T. 22 N., R. 3 W., thence North on the Eighth line a distance of 13 rods, thence E. 13 rods, thence S. 13 rods, thence W. on the Eighth line 13 rods to the place of beginning.

Parcel 9

SE¼SW¼SW¼ Sec. 34, T. 22 N., R. 3 W.

Juneau County

A parcel of land located in SW¼NE¼ and SE¼ of Sec. 19, NE¼NE¼ of Sec. 30, N½NW¼ of Sec. 29, all in T. 14 N., R. 6 E., 4th P.M., which is bound by a line described as follows:

Beginning at the SE corner of said Sec. 19, (unless otherwise noted, the bearings on the following descriptions are referenced to the E. line of Sec. 19 being a N. and S. line); thence N. 89° 37' E., 186 ft. along the North line of the NW¼NW¼ of Sec. 29; thence S. 18° 42' E., 199.65 ft.; thence S. 23° 59' E., 129.70 ft.; thence S. 29° 09' E., 666.65 ft.; thence N. 82° 47' W., 154 ft.; thence S. 12° 25' W., 314.00 ft. to a point which is 60 ft., measured at right angles from the easterly right-of-way of I–90 & 94; thence S. 47° 31' E., (highway bearing), parallel with said right-of-way, 166.75 ft.; thence S. 86° 40' E., 762.00 ft., parallel with the South line of the N½, NW¼ Sec. 29, to the centerline of CTH "N"; thence along said center-line S. 52° 18' E., 74.00 ft.; thence S. 74° 40' E., 65.70 ft.; thence S. 86° 30' E., 104.60 ft., to the South line of the N½NW¼ of said Sec. 29; thence N. 87° 40' W., 1009.00 ft., along said south line, to the easterly right-of-way of said I–29 & 94; thence Northerly along said Easterly right-of-way, (using bearings as designated on I–90 & 94 Highway Plans) as follows: Thence N. 47° 31' W., 770.72 ft.; thence N. 42° 19' W., 667.20 ft., to the point of curve to the right, radius 22,768.31 ft.; thence along the arc of said curve whose chord bears N. 45° 34' W., 1549.49 ft., to the point of tangency; thence N. 43° 37' W., 1502.46 ft., to the N–S one-quarter line of said Sec. 19; thence N. 1° 08' E., (the following bearings are referenced to the East line of Sec. 19 as being N–S) 916.60 ft., to the Southerly right-of-way of CTH "N"; thence Southeasterly along said right-of-way, along the arc of a curve, whose chord bears S. 55° 27' E., 193.3 ft.; thence S. 1° 08' W., 258.3 ft.; thence S. 55° 30' E., 446.9 ft., to the SW corner of a parcel described in Vol. 144, p. 616 of Deeds; thence S. 59° 18' E., 660.00 ft., parallel with the centerline of CTH "N"; thence N. 17° 07' E., 298.10 ft., to the centerline of CTH "N"; thence S. 59° 39' E., 535.55 ft., along said centerline; thence S. 55° 38' E., 75.00 ft., along said centerline; thence S. 51° 08' E., 77.85 ft., along said centerline; thence S. 43° 41' W., 390 ft., along the West line of the parcel described in Vol. 158, p. 163 of Deeds; thence S. 46° 19' E., 950 ft., along the South line of parcels described in Vol. 158, p. 163 of Deeds, and Vol. 156 p. 593 of Deeds; thence N. 43° 41' E., 390 ft., along the Easterly line of the parcel described in Vol. 156, p. 593 of Deeds; thence S. 46° 19' E., 201.00 ft., to a point where the centerline of CTH "N" intersects the East line of said Sec. 19; thence S. 889.68 ft., along East line to the point of beginning, containing 83 acres, more or less. Subject to an easement 30 ft. in width for the purpose of gaining access to the NE¼SW¼ of Sec. 19, T. 14 N., R. 6 E., more particularly described as follows:

Commencing at the SW corner of SW¼NE¼ of Sec. 19, thence South 30 ft. along the N and S centerline of said Sec. 19, thence East 30 feet, thence North parallel to said N and S centerline southerly line of County Trunk N, thence northwesterly along said southerly right-of-way to the N and S centerline of Sec. 19, thence South along said centerline to the point of beginning.

Monroe County

Parcel 1

The NE¼SW¼ Sec. 18, T. 18 N., R. 1 E., less the following described tracts:

(1) Commencing at the NW corner of said NE¼SW¼ Sec. 18, T. 18 N., R. 1 E., thence S. 75 ft., to point of beginning, thence E. 292 ft., thence South 325 ft., thence West 292 ft., thence North 325 ft. to the point of beginning;

(2) Commencing at the SW corner of above-described forty, thence N. 66 ft., to point of beginning, thence North 300 ft., thence E 365 ft., thence South 300 ft., thence West 365 ft., to the point of beginning;

(3) Commencing at the SW corner of above-described forty, thence North 366 ft., to point of beginning, thence North 150 ft., thence West 292 ft., thence South 150 ft., thence West 292 ft., to the point of beginning; and

(4) The South 66 feet of the above-described forty.

Parcel 2

E½NE¼NE¼, Sec. 24, T. 18 N., R. 1 W., containing 20 acres, more or less.

Sauk County

Parcel 1

Lot 1 (NE¼NE¼) Sec. 15, T. 13 N., R. 5 E.

Parcel 2

A parcel of land located in the NE¼NE¼ and SE¼NE¼ of Sec. 15, T. 13 N., R. 5 E., Town of Dellona, Sauk County, Wisconsin, to-wit; Beginning at the E-quarter corner of said Section 15; thence N. 88° 10' 44" W., 567.79 ft.; thence N. 1471.93 ft.; thence N. 21° 50" 51" W., 555.90 ft.; thence N. 68° 09' 09" E., 834.29 ft.; thence S. 2316.41 ft. to the point of beginning and containing 30 acres, more or less.

Parcel 3

Lot 3 (SE¼SE¼) Sec. 3, T. 12 N., R. 6 E.

Shawano County

The South 300 feet of the NE fractional ¼ NE¼ Sec. 4, T. 27 N., R. 11 E.

Wood County

Parcel 1

SE¼SE¼ Sec. 24, T. 21 N., R. 4 E.

Parcel 2

The E½NE¼NE¼, EXCEPTING the South 209 feet of the E. 209 ft., and excepting the

West 209 feet of the South 1,040 feet of Sec. 28, T. 22 N., R. 4 E. P.M.

Subject to all valid existing easements, reservations; and rights-of-way of record.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 86-25957 Filed 11-17-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[WY-920-07-4111-15-7001; W-74031-G]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-74031-G for lands in Weston County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-74031-G effective October 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86-25928 Filed 11-17-86; 8:45 am]

BILLING CODE 4310-22-M

[AZ-020-06-4212-12; A 22448]

Exchange of Lands, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Exchange of public lands, Maricopa, Yavapai and Mohave Counties, Arizona.

SUMMARY: The Phoenix District will be exchanging 12,155.16 acres of public land for approximately 40,939.91 acres of land owned by the State of Arizona as authorized by section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The exchange will be on an equal value basis as determined by appraisal.

Some of the lands involve base floodplains. Excluding lands within the base floodplain from the exchange is not a practicable alternative.

The public lands exchanged will be the following:

Gila and Salt River Meridian

T. 7 N., R. 2 E.,
Sec. 26.
T. 6 N., R. 3 E.,
Secs. 35, 36.
T. 11 N., R. 3 E.,
Sec. 19.
T. 5 N., R. 4 E.,
Secs. 6, 7.
T. 6 N., R. 4 E.,
Secs. 4,7,.
T. 27 N., R. 9 E.,
Sec. 24.
T. 26 N., R. 10 E.,
Sec. 34.
T. 27 N., R. 10 E.,
Secs. 6, 18, 20, 30.
T. 20 N., R. 11 E.,
Sec. 22.
T. 23 N., R. 11 E.,
Sec. 32.
T. 24 N., R. 11 E.,
Sec. 6.
T. 25 N., R. 11 E.,
Sec. 30.
T. 25 N., R. 1 W.,
Sec. 30.
T. 18 N., R. 11 W.,
Sec. 17.
T. 17 N., R. 12 W.,
Sec. 1.
T. 18 N., R. 12 W.,
Secs. 16, 29, 32.
T. 19 N., R. 12 W.,
Sec. 21.
T. 21 N., R. 12 W.,
Sec. 4.
T. 18 N., R. 12 W.,
Secs. 2, 35, 36.
T. 19 N., R. 13 W.,
Secs. 2, 7, 32, 36.
T. 20 N., R. 13 W.,
Sec. 36.
T. 22 N., R. 14 W.,
Sec. 9.
T. 23 N., R. 14 W.,
Sec. 36.
T. 22 N., R. 15 W.,
Secs. 13, 23, 34.

The state lands to be acquired will be within the following sections in Maricopa, Pinal, and Mohave Counties.

T. 5 N., R. 2 E.,
Sec. 5.
T. 1 S., R. 10 E.,
Secs. 25, 26.
T. 15 N., R. 10 W.,
Secs. 2, 16.
T. 16 N., R. 10 W.,
Sec. 36.
T. 11 N., R. 11 W.,
Secs. 13, 14.
T. 14 N., R. 12 W.,
Secs. 2, 16.
T. 16½ N., R. 12 W.,
Sec. 32.
T. 17 N., R. 12 W.,
Secs. 4, 6, 8, 16, 18, 20, 22, 28, 30, 34.
T. 13 N., R. 13 W.,
Secs. 16, 32, 36.
T. 15 N., R. 13 W.,
Secs. 12, 16, 32.
T. 16 N., R. 13 W.,
Secs. 2, 32.
T. 17 N., R. 13 W.,
Sec. 2.
T. 18 N., R. 13 W.,
Secs. 26, 34.
T. 12 N., R. 14 W.,
Secs. 16, 32.
T. 13 N., R. 14 W.,
Secs. 16, 32, 36.
T. 17 N., R. 14 W.,
Sec. 36.
T. 11 N., R. 15 W.,
Secs. 8, 16.
T. 12 N., R. 15 W.,
Sec. 2.
T. 13 N., R. 15 W.,
Secs. 16, 32.
T. 25 N., R. 15 W.,
Sec. 2.
T. 28 N., R. 15 W.,
Sec. 32.
T. 29 N., R. 15 W.,
Secs. 16, 32.
T. 30 N., R. 15 W.,
Sec. 32.
T. 12 N., R. 16 W.,
Sec. 16.
T. 13 N., R. 16 W.,
Sec. 36.
T. 24 N., R. 16 W.,
Sec. 2.
T. 25 N., R. 16 W.,
Sec. 32.
T. 28 N., R. 16 W.,
Sec. 36.
T. 30 N., R. 16 W.,
Sec. 36.
T. 21 N., R. 17 W.,
Sec. 32.
T. 23 N., R. 17 W.,
Secs. 3, 4, 10, 15, 22, 23, 26.
T. 24 N., R. 17 W.,
Sec. 2.
T. 27 N., R. 17 W.,
Sec. 2.
T. 28 N., R. 17 W.,
Secs. 32, 36.
T. 29 N., R. 17 W.,
Sec. 36.
T. 24 N., R. 18 W.,
Sec. 2.
T. 25 N., R. 18 W.,
Sec. 2.
T. 26 N., R. 18 W.,
Secs. 24, 26, 34.
T. 28 N., R. 18 W.,
Secs. 2, 36.
T. 19 N., R. 19 W.,
Sec. 16.
T. 22 N., R. 19 W.,
Sec. 2.
T. 25 N., R. 19 W.,
Sec. 36.
T. 27 N., R. 19 W.,
Secs. 14, 30.
T. 19 N., R. 20 W.,
Sec. 2.
T. 20 N., R. 20 W.,
Sec. 2.
T. 21 N., R. 20 W.,

Secs. 2, 36.
T. 22 N., R. 20 W.,
Secs. 2, 32, 36.
T. 23 N., R. 20 W.,
Sec. 36.
T. 28 N., R. 20 W.,
Secs. 16, 32, 36.
T. 22 N., R. 21 W.,
Sec. 2.
T. 24 N., R. 21 W.,
Sec. 2.
T. 25 N., R. 21 W.,
Sec. 12.
T. 26 N., R. 21 W.,
Sec. 2.
T. 27 N., R. 21 W.,
Sec. 32.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: (a) Right-of-way for ditches and canals under the Act of August 30, 1890; and (b) a right-of-way for gas pipeline purposes for Maricopa County.

2. Subject to Maricopa County sanitary landfill lease AR–035138, and rights-of-way A–13944, A–16383 for roads, and A–17724 for bridge abutments.

3. Subject to Lloyd William's mill site, AMC 69188.

4. Yavapai County floodplain regulations.

Detailed information concerning this exchange can be obtained from Phoenix District Office. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: November 6, 1986.

Henri R. Bisson,

Acting District Manager.

[FR Doc. 86–25939 Filed 11–17–86; 8:45 am]

BILLING CODE 4310-32-M

[ID–943–07–4220–11; I–15072]

Idaho; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a portion of the withdrawal for the Cascade Reservoir and the potential Garden Valley Reservoir Site be continued for an additional 60 years. This is the estimated remaining life of the improvements with which the Cascade Reservoir is associated. Under the proposal, the 3,754 acres involved would remain closed to surface entry and the mining laws, but the entire acreage has been and would remain open to the mineral leasing laws.

DATE: Comments should be received by February 17, 1987.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208–334–1597.

The Bureau of Reclamation proposes that a portion of the land withdrawal made by the Secretarial Order of April 26, 1938, be continued for a period of 60 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are located within the following-described townships:

Boise Meridian, Idaho

T. 9 S., Rs. 3 and 4 E.
T. 10 N., R. 4 E.
T. 14 N., R. 3 E.
T. 15 N., R. 3 E.
T. 16 N., R. 3 E.

The total area involved contains 3,754 acres, more or less, in Boise and Valley Counties.

The land is located along and under Cascade Reservoir within 15 miles of the community of Gascade, Idaho and along the South and Middle Forks of the Payette River. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: November 7, 1986

William E. Ireland,

Chief Realty Operations Section.

[FR Doc. 86–25929 Filed 11–17–86; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

Development Operations Coordination; Mobil Oil Exploration and Producing Southeast Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Mobil Oil Exploration & Producing Southeast Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 053 and 054, Blocks 128 and 129 respectively, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 4, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules govening practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 7, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-25930 Filed 11-17-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination; TXP Operating Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that TXP Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4918, Block 273, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on November 5, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 7, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-25958 Filed 11-17-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 8, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 2, 1986.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Moffat County

Dinosaur, *Chew, Rial, Ranch Complex (Dinosaur National Monument MRA)*, US 40

Dinosaur, *Douglass, Earl, Workshop-Laboratory (Dinosaur National Monument MRA)*, US 40

Dinosaur, *Julien, Denis, Inscription (Dinosaur National Monument MRA)*, US 40

Dinosaur, *Morris, Josie Bassett, Ranch Complex (Dinosaur National Monument MRA)*, US 40

Dinosaur, *Quarry Visitor Center (Dinosaur National Monument MRA)*, US 40

Dinosaur, *Upper Wade and Curtis Cabin (Dinosaur National Monument MRA)*, US 40

GEORGIA

Talbot County

Prattsburg, *Mathews, John Frank, Plantation*, US 80 at George Smith Rd.

MASSACHUSETTS

Middlesex County

Wakefield, *US Post Office—Wakefield Main*, 321 Main St.

Woburn, *US Post Office—Woburn Center Station*, 2 Abbott St.

Worcester County

Whitinsville, *US Post Office—Whitinsville Main, 58 Church St.*

MICHIGAN

Mecosta County

Big Rapids, *Nisbett Building*, 101 S. Michigan Ave.

Shiawassee County

Durand vicinity, *Williams—Cole House*, 6810 Newburg Rd.

NEBRASKA

Dawson County

Gothenburg, *Carnegie Public Library*, 1104 Lake Ave.

Douglas County

Omaha, *Jobbers' Canyon Historic District*, Roughly bounded by Farnum, Eighth, Jackson, and Tenth Sts.

Omaha, *Richardson Building*, 902 Jackson

Omaha, *Strehlow Terrace*, 2024 & 2107 N. Sixteenth St.

NEW HAMPSHIRE

Carroll County

Albany, *Russell—Colbath House*, Kancamagus Hwy.

NORTH CAROLINA

Alamance County

Burlington vicinity, *McCray School*, NW side of NC 62, S of jct. with SR 1757 Graham vicinity, Cedarock Park Historic District, SR 2409

Mebane vicinity, *Cooper School*, S side of SR 2143, E of jct. with SR 2142

Forsyth County

Winston-Salem, *West End Historic District*, Roughly bounded by W. End Blvd., Sixth, Broad, & Fourth Sts., I-40, Sunset Dr., and Peters Creek

Rowan County

Salisbury, *Salisbury Railroad Corridor Historic District*, Roughly East Council, Liberty, Kerr, Cemetery, Franklin, Lee, and Depot Sts.

Wake County

Fuquay-Varina, *Fuquay Mineral Spring*, NE Corner of Main and West Spring Sts.

OHIO

Franklin County

Columbus, *Broad Street Christian Church (East Broad Street MRA)*, 1051 E. Broad St.

Columbus, *Broadmoor Apartments (East Broad Street MRA)*, 880—886 E. Broad St.

Columbus, *Broadway Apartments (East Broad Street MRA)*, 775 E. Broad St.

Columbus, *Cambridge Arms (East Broad Street MRA)*, 926 E. Broad St.

Columbus, *Central Assurance Company (East Broad Street MRA)*, 741 E. Broad St.

Columbus, *East Broad Street Presbyterian Church (East Broad Street MRA)*, 760 E. Broad St.

Columbus, *East Broad Street Historic District (East Broad Street MRA)*, Roughly between Ohio and Moneypenny Aves, on the north and Sherman and Auburn Aves, on the south

Columbus, *Heyne—Zimmerman House (East Broad Street MRA)*, 973 E. Broad St.

Columbus, *Hickok, Frank, House (East Broad Street MRA)*, 955 and 957 E. Broad St.

Columbus, *House at 753 E. Broad Street (East Broad Street MRA)*, 753 E. Broad St.

Columbus, *Jacobs, Felix A., House*, 1421 Hamlet St.
Columbus, *Johnston—Campbell House (East Broad Street MRA)*, 1203 E. Broad St.
Columbus, *Jong Mea Restaurant—McArthur Savings & Loan Company (East Broad Street MRA)*, 747, 749, and 751 E. Broad St.
Columbus, *Joseph—Cherrington House (East Broad Street MRA)*, 785 E. Broad St.
Columbus, *Kauffman, Linus B., House (East Broad Street MRA)*, 906 E. Broad St.
Columbus, *Kaufman, Frank J., House (East Broad Street MRA)*, 1231 E. Broad St.
Columbus, *Levy, Soloman, House (East Broad Street MRA)*, 929 E. Broad St.
Columbus, *Lovejoy, Carrie, House (East Broad Street MRA)*, 807 E. Broad St.
Columbus, *Morris, C.E., House (East Broad Street MRA)*, 875 E. Broad St.
Columbus, *Prentiss, Fredrick, House (East Broad Street MRA)*, 706 E. Broad St.
Columbus, *Prentiss—Tulford House (East Broad Street MRA)*, 1074 E. Broad St.
Columbus, *Saint Paul's Episcopal Church (East Broad Street MRA)*, 787 E. Broad St.
Columbus, *Schueller, Erwin W., House (East Broad Street MRA)*, 904 E. Broad St.
Columbus, *Scofield—Sanor House (East Broad Street MRA)*, 1031 E. Broad St.
Columbus, *Sharp—Page House (East Broad Street MRA)*, 935 E. Broad St.
Columbus, *Shedd—Dunn House (East Broad Street MRA)*, 965 E. Broad St.

Hancock County

Findlay vicinity, *Powell, Andrew, Homestead*, 9821 CR 313

VERMONT

Orleans County

Holland, *Holland Congregational Church*, West Holland Rd.

VIRGINIA

Norfolk (Independent City)

St. John's African Methodist Episcopal Church, 539—545 E. Bute St.

WISCONSIN

Waukesha County

Hartland, *Bailie, Ralph C., House (Hartland MRA)*, 530 North Ave.
Hartland, *Bank of Hartland (Hartland MRA)*, 112 E. Capitol Dr.
Hartland, *Burr Oak Tavern (Hartland MRA)*, 315—317 E. Capitol Dr.
Hartland, *Dansk Evangilical Lutheran Kirke (Hartland MRA)*, 400 E. Capitol Dr.
Hartland, *First Congregational Church (Hartland MRA)*, 214 E. Capitol Dr.
Hartland, *Hartland Railroad Depot (Hartland MRA)*, 301 Pawling Ave.
Hartland, *Hornburg, Harold, House (Hartland MRA)*, 213 Warren Ave.
Hartland, *Jackson House (Hartland MRA)*, 235 North Ave.
Hartland, *Sign of the Willows (Hartland MRA)*, 122 E. Capitol Dr.
Hartland, *Trapp Filling Station (Hartland MRA)*, 252—256 W. Capitol Dr.
Hartland, *Van Buren—Sara Belle, (Hartland MRA)*, 128 Hill St.
Hartland, *Warren, Stephen, House (Hartland MRA)*, 235 E. Capitol Dr.
Hartland, *Zion Evangelical Lutheran Church (Hartland MRA)*, 403 W. Capitol Dr.

WYOMING

Big Horn County

Black Mountain Archaeological District (48BH900/902/1065/1067/1126/1127/1128/1129)

Crook County

Arch Creek Petroglyphs (48CK41)

[FR Doc. 86-25797 Filed 11-17-86; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of Information Collection

The proposed information collection is for use the Commission in connection with investigation No. 332-232, U.S. Global Competitiveness: The U.S. Automotive Parts Industry, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C 1332).

Summary of Proposal

(1) Number of form: three;
(2) Title of form: The U.S. Automotive Parts Industry, Questionnaires for Producers, Importers, and Purchases;
(3) Type of request: new;
(4) Frequency of use: nonrecurring;
(5) Description of respondents: Firms that produce, import, and purchase automotive parts;
(6) Estimated total number of respondents: 365;
(7) Estimated total number of hours to complete the forms: 5,621; and
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from Dennis Rapkins, (USITC tel. 202-523-0299). Comments about the proposal should be directed to the Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Office for U.S. International Trade Commission. Any comments should be specific indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

Submission of Comments

Comments should be submitted to OMB within two weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Ms. Picoult's telephone number is 202-395-7231. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW., Washinton, DC 20346).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

By order of the Commission.

Issued: November 13, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-25975 Filed 11-17-86; 8:45 am]
BILLING CODE 7020-02-14

[Investigations Nos. 701-TA-285 and 286 (Preliminary) and 731-TA-365 and 366 (Preliminary)]

Industrial Phosphoric Acid From Belgium and Israel

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701-TA-285 and 286 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium and Israel of industrial phosphoric acid, provided for in item 416.30 of the Tariff Schedules of the United States (TSUS), which are alleged to be subsidized by the Governments of Belgium and Israel.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-365 and 366 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine

whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium and Israel of industrial phosphoric acid, provided for in TSUS item 416.30, which are alleged to be sold in the United States at less than fair value. As provided in sections 703(a) and 733(a) of the act, the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in these cases by December 22, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Ilene Hersher (202–523–4616), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on November 5, 1986, by counsel on behalf of FMC Corp., Chicago, IL, and Monsanto Co., St. Louis, MO.

Participation in the Investigations

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certficate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on November 26, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Ilene Hersher (202–523–4616) not later than November 24, 1986 to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submission

Any person may submit to the Commission on or before December 2, 1986 a written statement of information pertaining to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 13, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–26025 Filed 11–17–86; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30863]

Burlington Northern Railroad Co. and Soo Line Railroad Co.; Trackage Rights, Construction, and Operation Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission: (1) under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10901, the construction of a 1,200-foot connecting track at Lucca, ND, by Burlington Northern Railroad Company (BN) and Soo Line Railroad Company (Soo); and (2) under 49 CFR 1180.2(d)(7) and 49 CFR 1150.31, respectively, gives notices of exemption (a) for an agreement under which BN is acquiring overhead trackage rights over Soo's 12.49-mile line of railroad between Sheldon (mp 252.62) and Lucca (mp 262.11), ND, subject the employee protective conditions set forth in *Norfolk & W.R. Co.–Trackage Rights–BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.–Lease and Operate*, 360 I.C.C. 653 (1980); and (b) for BN's operation over the connecting track to be constructed at Lucca.

DATES: The decision exempting the construction of connecting track is effective on December 18, 1986. Petitions to stay must be filed by November 28, 1986 and petition for reconsideration must be filed by December 8, 1986.

The exemptions for the trackage rights and for the operations over the new connecting track are effective on November 18, 1986. Petitions to revoke these class exemptions may be filed at any time under 49 U.S.C. 10505(d). The filing of a petition to revoke will not stay the transactions. If the documents supporting the class exemptions contain false or misleading information, the exemptions will be void *ab initio*.

ADDRESSES: Send pleadings referring to Finance Docket No. 30863 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Railroad's representatives: Edmund W. Burke, Douglas J. Babb, Peter M. Lee, Burlington Northern

Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Joseph. H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: November 10, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86–25972 Filed 11–17–86; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30821 (Sub-1)]

Missouri Pacific Railroad Co. and Houston Belt and Terminal Railway Co.; Construction and Operation Exemption, Houston, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 10901, the construction and operation of a 500-foot connecting track at Pierce Junction, in Houston, TX, by the Missouri Pacific Railway Company and Houston Belt & Terminal Railway Company.

DATES: The decision is effective on November 28, 1986. Petitions to reopen must be filed by December 8, 1986.

ADDRESS: Send pleadings referring to Finance Docket No. 30821 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Railroad's representative: Colleen A. Lamont, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: November 10, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86–25973 Filed 11–17–86; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30919]

Colleton County Railroad Co., Inc., Acquisition and Operation Exemption; Certain Lines of Seaboard System Railroad; Correction

November 13, 1986.

The notice of exemption, that was served and published in the **Federal Register** on October 27, 1986 (51 FR 37987), contains an inadvertant error. In the first sentence of the first paragraph the milepost number for Walterboro, SC should be changed from 444.18 to 443.18.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86–75974 Filed 11–17–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Fairbanks T. Chua, M.D.; Revocation of Registration

On September 25, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Fairbanks T. Chua, M.D., Memphis Medical Clinic, 35040 Helze Lane, Memphis, Michigan. The Order to Show Cause sought to revoke Dr. Chua's current DEA Certificate of Registration, AC8814736, and deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f), for reason that: (1) On November 12, 1985, Dr. Chua was convicted on six counts of unlawfully delivering a substance containing Valium, other than as authorized by law, felony convictions relating to controlled substances, and (2) Dr. Chua's continued registration is inconsistent with the public interest, as evidenced by the following: (a) In addition to the above-mentioned offenses, Dr. Chua was indicted on two counts of unlawfully delivering a substance containing a controlled substance, to wit: terpin hydrate elixir with codeine, other than authorized by law, felony offenses relating to controlled substances, and (b) On several occasions, Dr. Chua wrote prescriptions for various controlled substances, including Tussionex, Citra Forte syrup and Darvocet, for no legitimate medical purpose.

On October 6, 1986, Dr. Chua, through counsel, filed a written statement explaining his opposition to the proposed revocation. Since Dr. Chua did not request a hearing on the issues raised in the Order to Show Cause, the Administrator concludes that he waived his opportunity for a hearing, and enters this final order after taking into consideration the information contained in the investigative file, Dr. Chua's written statement, and the record of the proceedings at this time. See 21 CFR 1301.54(c).

In his written statement, Dr. Chua argues that since he was not found guilty of all eight counts of the criminal indictment, and that since his criminal convictions are on appeal, he should be entitled to continue practicing medicine unless and until the Appellate Court of the State of Illinois affirms his convictions.

After carefully reviewing Dr. Chua's written statement, the Administrator concludes that the issues addressed therein can be afforded little weight when considering the revocation of Dr. Chua's DEA Certificate of Registration. First, although Dr. Chua was not found guilty of two counts contained in the original criminal indictment, he was convicted, by a jury of his peers, of six felony offenses relating to controlled substances. Second, all of the information relating to the two counts of the indictment which were dismissed can be considered in this administrative proceeding. Such information can be considered in determining whether Dr. Chua's registration should be revoked, despite the lack of criminal conviction on those two counts. Finally, the fact that Dr. Chua's criminal case presently is on appeal in the Appellate Court of the State of Illinois is irrelevant to this matter. At this point, Dr. Chua's six felony convictions for violating Illinois' controlled substance statutes have not been reversed. The Administrator has consistently held that felony convictions relating to controlled substances are statutory grounds for the revocation of a registrant's DEA Certificate of Registration, and for the denial of any pending renewal applications, regardless of whether the underlying criminal case is on appeal. See *Donald Wardell Andrews, M.D.*, 47 FR 56745 (1982); and *Lamar T. Zimmerman, M.D.*, 45 FR 3405 (1980). Therefore, the convictions can serve as statutory grounds for the revocation of Dr. Chua's

current DEA Certificate of Registration, and for the denial of any pending applications for renewal.

The Administrator finds that on November 12, 1985, in the Circuit Court of Cook County, Illinois, Dr. Chua was convicted of six counts of unlawfully delivering a substance containing a controlled substance, to wit: Valium, the trade name for diazepam, a Schedule IV controlled substance, other than as authorized by law in violation of Chapter 56½, section 1401(f) of the Illinois Revised Statutes, felony convictions relating to controlled substances. The felony convictions resulted from Dr. Chua's writing of prescriptions for Valium without conducting physical examinations of the persons to whom the prescriptions were issued. Dr. Chua's felony convictions provide a sufficient statutory basis for the revocation of his DEA Certificate of Registration and for the denial of any pending applications for renewal. See 21 U.S.C. 824(a)(2) and 21 U.S.C. 823(f)(3).

In addition, the investigative file reveals substantial evidence that Dr. Chua also wrote prescriptions for Tussionex and Citra Forte syrup, trade names for hydrocodone, both Schedule III controlled substances, Darvocet, the trade name for propoxyphene, a Schedule IV controlled substance, and terpin hydrate elixir with codeine, a Schedule V controlled substance, without conducting proper medical examinations on the persons receiving the prescriptions and for no legitimate medical purpose. The activities cited in the investigative file involved local undercover police officers visiting Dr. Chua in an attempt to obtain various controlled substances. In each situation, Dr. Chua either did not perform any medical examination of the officer, or only performed a cursory, inadequate examination, before prescribing the controlled substances requested by the officer. Dr. Chua was indicted on two counts of unlawfully delivering a substance containing a controlled substance, to wit: terpin hydrate elixir, a Schedule V controlled substance, other than as authorized by law, in violation of Chapter 56½, section 1401(f) of the Illinois Revised Statutes, as a result of these undercover operations. Prior to trial, the indictment on these two counts was dismissed. Even so, the Administrator finds substantial evidence in the investigative file to conclude that Dr. Chua was involved in such unlawful activities, regardless of the failure of the state of convict him on the charges. Such activities are obviously inconsistent with the public interest. Thus, Dr. Chua's improper prescribing habits clearly constitute grounds for the revocation of his DEA Certificate of Registration and the denial of any pending applications for renewal. See 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f)(2).

The Administrator also finds that, based upon Dr. Chua's felony convictions relating to controlled substances, on February 11, 1986, the Illinois Department of Registration and Education suspended his license to handle controlled substances in that state for a period of five years, and suspended his physician's and surgeon's license for a period of one year and nine months. Therefore, Dr. Chua is no longer authorized to practice medicine or handle controlled substances in the State of Illinois. As a result, Dr. Chua now practices medicine in the State of Michigan. As of this date, Dr. Chua retains the authority to handle controlled substances in the State of Michigan. Although Dr. Chua has modified his DEA Certificate of Registration to allow him to handle controlled substances in Michigan rather than Illinois, the action by the Illinois Department of Registration and Education serves as a determination of a state licensing board that Dr. Chua is incapable of properly handling controlled substances, and that his continued registration is inconsistent with the public interest. Such a determination constitutes yet another ground for the revocation of Dr. Chua's current DEA Certificate of Registration and for the denial of any pending applications for renewal. See 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(f)(1).

Based upon Dr. Chua's recent felony convictions relating to controlled substances, his other improper prescribing activities, and the suspension of his medical and controlled substance licenses in the State of Illinois, the Administrator finds that there is ample statutory basis for the revocation of Dr. Chua's DEA Certificate of Registration. Further, the Administrator concludes that, based upon the facts and circumstances presented in this case, Dr. Chua's registration indeed should be revoked, and that any pending applications for renewal should be denied. Therefore, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AC8814736, previously issued to Fairbanks T. Chua, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal, executed by Fairbanks T. Chua, M.D., be, and they hereby are, denied.

This order is effective December 18, 1986.

Dated: November 13, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-25967 Filed 11-17-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-3]

Irving M. Greenfarb, D.O., Morris Plains, NJ; Hearing

Notice is hereby given that on December 5, 1985, the Drug Enforcement Administration, Department of Justice, issued to Irving M. Greenfarb, D.O., an Order To Show Cause as to Why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AG4091714, and deny his application for renewal of that registration, executed on September 3, 1985, as a practitioner under 21 U.S.C. 823(f).

Notice is hereby given that the hearing in this matter is being rescheduled for Tuesday, November 25, 1986, commencing at 10:00 a.m. in Courtroom No. 10, U.S. Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: November 12, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-25922 Filed 11-17-86; 8:45 am]

BILLING CODE 4410-09-M

National Institute of Justice

Grant Funds to Supplement the National Crime Survey

AGENCY: National Institute of Justice and Bureau of Justice Statistics.

ACTION: Notice of availability of grant funds.

SUMMARY: Notice is hereby given that the National Institute of Justice and the Bureau of Justice Statistics are jointly-sponsoring a research program to address the addition of supplemental questions to the National Crime Survey. Information regarding the proposal requirements, application procedures, and deadline can be found in the published solicitation entitled *Supplementing the National Crime Survey.*

DATE: Copies of the solicitation are available immediately. The deadline for applications is March 27, 1987.

ADDRESS: Copies of the solicitation are available upon request at the following location: National Institute of Justice, 633 Indiana Ave, NW., Room 870, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Ms. Lauresa A. Stillwell of the National Institute of Justice at the address given above; telephone 202/724–2962.

James K. Stewart,

Director.

[FR Doc. 86–26014 Filed 11–17–86; 8:45 am]

BILLING CODE 4410–18–M

Federal Bureau of Investigation

Advisory Policy Board, National Crime Information Center; Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on December 10–11, 1986, from 9 a.m. until 5 p.m. at the Hotel Westcourt, 10220 North Metro Parkway East, Phoenix, Arizona 85051.

The major topic to be discussed will be the interstate exchange of criminal history records for licensing, employment, and security purposes at it relates to the NCIC Interstate Identification Index.

The meeting will be open to the public with approximately 20 seats available for seating on a first-come, first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. In should contain the name, corporate designation, consumer affiliation, or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, excpet with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC, Federal Bureau of Investigation, Washington, DC 20535, telephone number 202–234–2606.

Dated: November 10, 1986.

William H. Webster,

Director.

[FR Doc. 86–25977 Filed 11–17–86; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: December 9, 1986, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565.

Signed at Washington, DC, this 12th day of November 1986.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 86–25993 Filed 11–17–86; 8:45 am]

BILLING CODE 4510–28–M

Employment and Training Administration

[TA–W–18,240]

E.I. du Pont de Nemours and Co., Inc., Ingleside, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 30, 1986 in response to a worker petition received on September 22, 1986 which was filed on behalf of workers at the Corpus Christi plant in Ingleside, Texas of E.I. du Pont de Nemours & Company, Incorporated.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–18,187). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 31st day of October 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–25991 Filed 11–17–86; 8:45 am]

BILLING CODE 4510–01–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Esselte-Pendeflex et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 28, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adustment Assistance, at the address shown below, not later than November 28, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 3rd day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Esselte-Pendeflex (GAIU)	Elizabeth, NJ	10/16/86	9/30/86	TA-W-18,482	Stationary suppliers.
Regal Trucking Co. (Workers)	Laredo, TX	10/14/86	10/9/86	TA-W-18,483	Trucking services.
BJ Titan Services (Workers)	Hays, KS	10/9/86	10/6/86	TA-W-18,484	Cementing services.
Southern Union Exploration Co. (Workers)	Dallas, TX	10/9/86	9/29/86	TA-W-18,485	Crude oil and gas.
Franklin Supply Co. (Workers)	Denver and Brighton, CO	10/14/86	10/10/86	TA-W-18,486	Distribute tubing for oil companies.
Philips ECO (USWA)	Seneca Falls, NY	10/20/86	10/8/86	TA-W-18,487	TV tubes art data display tubes.
Fansteel Pasco Gear (Workers)	Phoenix, AZ	10/20/86	10/11/86	TA-W-18,488	Metal gears.
Uniroyal-Goodrich (Workers)	Eau Claire, WI	10/20/86	10/8/86	TA-W-18,489	Passenger car tires, farm tires and light truck tire
General Chemical Corp. (ICWU)	Front Royal, VA	10/10/86	10/14/86	TA-W-18,490	Sulfuric acid.
Baker Packers (Workers)	San Antonio, TX	10/20/86	10/8/86	TA-W-18,491	Produced downhole tools.
OWS, Incorporated (Workers)	Plainsville, KS	9/18/86	9/14/86	TA-W-18,492	Oilfield service.
Saw Drilling (Workers)	Victoria, TX	19/18/86	9/11/86	TA-W-18,493	Contract oil drilling
Luckys Well Service (Workers)	St. Elmo, IL	10/7/86	10/1/86	TA-W-18,494	Services underground pumps.
Rams Drilling Company (Workers)	Houston, TX	10/7/86	9/29/86	TA-W-18,495	Contract oil drilling.
PRC Drilling Company (Workers)	Corpus Christi, TX	9/18//86	9/15/86	TA-W-18,496	Contract oil drilling.
Schlumberger Well Service (Workers)	Gillette, WY	10/20/86	10/11/86	TA-W-18,497	Logging service on oil wells.
Patterson Rental Tools and Patterson Inspection Services Inc. (Workers).	Victoria, TX	10/20/86	10/13/86	TA-W-18,498	Buys and rents tools to oil companies.
Fryco (Workers)	Mt. Carmel, IL	10/22/86	10/14/86	TA-W-18,499	Well maintenance.
Sherman Drilling Co. (Workers)	Mineral City, OH	10/24/86	10/19/86	TA-W-18,500	Oil field service.
Smith Drilling Systems Div. of Smith Int'l (Company)	Houston, TX	10/21/86	10/16/86	TA-W-18,501	Oil drilling equipment.
MND Drilling Corp. Southern Division (Workers)	Magonolia, TX	10/24/86	10/20/86	TA-W-18,502	Drilling services.
Tennaco Oil Company Exploration and Production (Workers).	Houston, TX	10/23/86	10/13/86	TA-W-18,503	Oil and natural gas.
Johnie Hunter Oil Field Service, Inc. (Workers)	Laredo, TX	10/23/86	10/20/86	TA-W-18,504	Hook-up and maintenance of wells.
Dowell Schlumberger (Workers)	Mission	10/27/86	10/17/86	TA-W-18,505	Oil field services.
Amerada Hess Corp. (Workers)	Denver, CO	10/27/86	9/18/86	TA-W-18,506	Geological services.
Damson Oil Corporation (Workers)	Denver, CO	10/22/86	10/12/86	TA-W-18,507	Geological services.
Four Flags Drilling Company (Workers)	Corpus Christi, TX	9/18/86	9/12/86	TA-W-18,508	Oil well drilling.
Mid Coast Drilling (Workers)	Victoria, TX	9/16/86	9/15/86	TA-W-18,509	Oil well drilling.
Columbiana Pump Co. (USWA)	Columbiana, OH	10/2/86	9/20/86	TA-W-18,510	Gray and ductile iron castings.
Lugo Welding Service (Workers)	Laredo, TX	9/17/86	9/12/86	TA-W-18,511	Welding services for oil and gas companies.
North American Phillips Lighting Division (Company)	Bloomfield, NJ	10/20/86	10/10/86	TA-W-18,512	Light bulb parts.
Alco Power (USWA)	Auburn, NY	10/24/86	10/21/86	TA-W-18,513	Diesel engines, turbo charges and parts.
Connie Blouse Co. (ILGWU)	Roseto, PA	1/27/86	10/22/86	TA-W-18,514	Ladies' blouses.
J.H. Williams Hand (Workers)	Buffalo, NY	10/27/86	10/23/86	TA-W-18,515	Hand tools.
Lehigh Portland Cement Company (Boilermakers)	Waco, TX	10/23/86	10/2/86	TA-W-18,516	Cement.
Utex Industries, Inc. (Workers)	Weimas, TX	10/21/86	10/13/86	TA-W-18,517	Packing and gaskets for oil industry.
Dowell Schlumberger Oilfield Service (Workers)	Bryan, TX	10/20/86	10/13/86	TA-W-18,518	Provide a service of cementing oil wells.
Calnap Tanning Co. (Company)	Napa, CA	10/23/86	10/20/86	TA-W-18,519	Tanning of bather.
Saipen Drilling Co. (Workers)	Midland, TX	10/16/86	10/10/86	TA-W-18,520	Service drill for oil wells.
McAlister Trucking (Workers)	Wichita Falls, TX	10/17/86	10/13/86	TA-W-18,521	Service-trucking firm.
Gold Medal, Inc. (Workers)	Racine, WI	10/21/86	10/17/86	TA-W-18,522	Folding director chairs.
McAdoo Mfg. Co., Inc. (ACTWU)	McAdoo, PA	10/17/86	10/14/86	TA-W-18,523	Children's knitwear.
Rio Grande Drilling (Workers)	San Antonio, TX	10/21/86	10/15/86	TA-W-18,524	Drilling company.
Fox/Brady (Workers)	Appleton, WI	10/21/86	10/10/86	TA-W-18,525	Farm machinery.
S and M Fishing & Rental Incorporated (Workers)	Odessa, TX	10/20/86	10/13/86	TA-W-18,526	Perform reverse unit service to get oil from well.
Murvin Oil Co. (Workers)	Olmey, IL	10/21/86	10/17/86	TA-W-17,527	Oil company.
Utex Oil Company (Company)	Salt Lake City, UT	10/21/86	10/16/86	TA-W-17,528	Oil.
Sprague Elec. Co. (Workers)	Lansing, NC	10/21/86	10/16/86	TA-W-17,529	Electronics.
Cowden Mfg. (Workers)	Lancaster, KY	10/27/86	10/23/86	TA-W-17,530	Blue jeans.
Fayscott (Workers)	Dexter, ME	10/21/86	10/15/86	TA-W-17,531	Grinders and gear handing equipment.
Ohio Brass Rectifiers (Workers)	Oak Hill, WV	10/21/86	10/15/86	TA-W-18,532	Power pectifiers.
Ensign-Brickford (Workers)	Louviers, CO	10/21/86	10/14/86	TA-W-18,533	Detonating cord and fuses.
Exploration Surveys Inc. (Workers)	Plano, TX	10/21/86	10/10/86	TA-W-18,534	Geophysical maps.
Gard Drilling, Inc. (Workers)	Gallipolis, OH	10/27/86	10/20/86	TA-W-18,535	Contract Drilling for oil and gas.
Quaker State Oil Refining Corp. (Workers)	Titusville, PA	10/27/86	10/20/86	TA-W-18,536	Crude oil.
Beverly Blouse Co, Inc.	Nazareth, PA	10/27/86	10/23/86	TA-W-18,537	Blouses and sportswear.
Essex Shoe Trimming Co. (Workers)	Haverhill, MA	10/27/86	10/23/86	TA-W-18,538	Contract tanning and leather finishing.
United States Steel Mining Co.	Gary, WV	10/27/86	10/22/86	TA-W-18,539	Metallurgical coal.
D&I Fashions, Inc.	Nowark, NJ	10/27/86	10/22/86	TA-W-18,540	Skirts.
Final Oil and Chemical Co. (Workers)	Dallas, TX	10/27/86	10/15/86	TA-W-18,541	Crude Oil, petrochemicals and refined products
Sheffield Footwear Mfg. (Workers)	Miami, FL	10/27/86	10/20/86	TA-W-18,542	Cloth slippers and fabric shoes.
Energy Dynamics, Inc. (Workers)	Alice, TX	10/27/86	10/21/86	TA-W-18,543	Gas engine and gas compressor repair parts.
Chevron U.S.A., Inc. (Workers)	Cleves, OH	10/27/86	10/15/86	TA-W-18,544	Refined crude oil (i.e.-gasoline, diesel, heating oil).
Western Oceanic, Inc. (Workers)	Houston, TX	10/22/86	10/04/86	TA-W-18,546	Contract drilling.
Central Foundry Div. General Motors (UAWA)	Massens, NY	10/11/86	9/24/86	TA-W-18-,546	Manufactures cylinder heads piston, transmission cases and brake drums for automobiles.

[FR Doc. 86-25995 Filed 11-17-86; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-17, 759]

Lepanto Garments Co./Minatola Industries, Lepanto, AR; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 28, 1986 in response to a worker petition received on July 14, 1986 which was filed on behalf of workers at Lepanto Garments Company/Minatola Industries, Lepanto, Arkansas.

An active certification covering the petitioning group of workers remains in effect (TA-W-17,193). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 28th day of October 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-25992 Filed 11-17-86; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Southwestern Portland Cement Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period October 27, 1986 through October 31, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to work separations at the firm.

TA-W-17,881; Southwestern Portland Cement Co., Odessa, TX

TA-W-17,514; Champion International Corp., Creedmoor, NC

TA-W-17,316; Basf Corp—Fibers Division, Williamsburg, VA

TA-W-17,688; Weatherly Foundry & Manufacturing Co., Weatherly, PA

TA-W-17,724; Ford Motor Co., Direct Market Operation, Newark, NJ

TA-W-17,826; Fiberglass Systems, Inc., Big Spring, TX

TA-W-17,346; Stewart-Warner Corp., Div 1 (Alemite & Instrument Division) Chicago, IL

TA-W-17,504; GS Electric Motors, Inc., Racine, WI

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-17,908; American Pipe Inspection, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,876; Gambles, Inc., Minneapolis, MN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,267; Flexcel Company, Inc., Marshall, TX

Aggregate U.S. imports of oil field equipment are negligible.

TA-W-18,276; Lovett, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,292; NL Bariod, Port Lavaca, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,270; Baker Packers, Corpus Christi, TX

Aggregate U.S. imports of oilfield equipment are negligible.

TA-W-18,277; Gemoco, Corpus Christi, TX

Aggregate U.S. imports of oilfield equipment are negligible.

TA-W-18,069; Turner Tubular Services, Inc., Corpus Christi, TX

Aggregate U.S. imports of carbon and alloy steel pipe and tubing did not increase as required for certification.

TA-W-17,511; Totco, Mills, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,512; Totco, Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,677; Pool Well Servicing Co., Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-17,543; Mack Truck, Inc., Allentown Assembly Operations & Machine Fabrication Div., Allentown, PA

An analysis of the market supplied by the subject firm indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-18,261; Clovis Riley, Inc., Pearsall, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,264; Murfin Drilling Co., Colby, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,265; Welex, Inc., Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,268; Dixilyn Field Drilling Company, Alice, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,269; Cherokee Drilling and Development, Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,271; Pool Company, Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,272; Red Tiger Drilling, Wichita, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,274; Banner Drilling Co., Scottsbluff, NE

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,285; The Western Company, Snyder, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,286; Trend Exploration LTD, Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-18,290; Halliburton Services, Artesia, NM

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,291; Halliburton Services, Rankin, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,293; Dresser Atlas, Laredo, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974

TA–W–18,294; Johnn Drilling Company, Odessa, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,295; Les Wilson, Inc., Carmi, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,869; Bryson Tank Co., Odessa, TX

Aggregate U.S. imports of storage tanks are negligible.

TA–W–17,982; Ansewn Shoe Co., Bangor, ME

The temporary worker separations at the firm were attributable to seasonality and normal business fluctuations.

TA–W–17,924; LTV Steel Tubular Products, Co., Younstown, OH

Aggregate U.S. imports of steel pipe and tubing did not increase as required for certification.

TA–W–17,493; Dan River, Inc., Wetumpka, AL

The investigation revealed that criterion (2) and (3) have not been met. Production increased in the 1984–85 and January-May 1985 1986 comparative periods. Separation of workers at the subject firm was due to a reorganization of the workforce resulting in a more efficient use of the workers.

TA–W–17,979; Hilti Inc., Hilti Steel Industrial Div., Cleveland, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,002; and 18,003; Bunker Limited Partnership, Crescent Silver Mine, Inc., Kellogg, ID and Big Creek, ID

All the subject firm's output is exported.

TA–W–17,777; Hoover Allison, Xenia, OH

Imports of processed jute fiber have not increased.

TA–W–18,205; Kodak Processing Lab, Dallas, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,977; Kodak Processing Lab, Rochester, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,379; Dresser Atlas, Victoria, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,380; M and M Service Company, Pearsall, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,388; Moore Petroleum Services, Missouri City, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,395; Drill Collar Inspection Co., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,398; Sheehan Exploration, Casper, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,399; Norton Drilling Co., Lubbock, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,402; G and G Tank Rentals, Freer, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,405; Grant Norpac, Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,408; Mesa Drilling Company, Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,413; Four Flags Drilling Company, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,415; Mo-Vac Service Company, Laredo, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,416; Brown Drilling Company, Pleasantville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,419; Midland Mud, Inc., Hays, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,422; Loffland Brothers Company, Grant Junction, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,428; AGAT-Geochem Consultants, Inc., Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,429; Geophysical Services, Inc., Stafford, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA–W–17,404; Cabot Corp., Wrought Products Div., Kohomo, IN

A certification was issued covering all workers of the firm separated on or after September 1, 1985.

TA–W–17,495; Moore Mill and Lumber Co., Bandon, OR

A certification was issued covering all workers of the firm separated on or after September 1, 1985.

TA–W–17,494; Erco Industries, Inc., Monroe, LA

A certification was issued covering all workers of the firm separated on or after May 2, 1985 and before November 30, 1985.

TA–W–17,417; Dan River, Inc., Benton, AL

A certification was issued covering all workers of the firm separated on or after May 1, 1986 and before October 1, 1986.

TA–W–17,647; Wyman-Gordon Co., Harvey, IL

A certification was issued covering all workers of the firm separated on or after June 16, 1985.

TA–W–17,368; Sanford Manufacturing, Wilkes Barre, PA

A certification was issued covering all workers of the firm separated on or after April 3, 1985 and before December 6, 1985.

TA–W–17,433; Ohio Ferro-Alloys Corp., Mt Meigs, AL

A certification was issued covering all workers of the firm separated on or after July 1, 1985.

TA–W–17,597; Beloit Corp., Beloit, WI

A certification was issued covering all workers of the firm separated on or after October 1, 1985.

TA–W–17,868; Thermo-Serv, Inc., Anoka, MN

A certification was issued covering all workers of the firm separated on or after December 1, 1985.

TA–W–17,716; Ciba-Geigy Corp., Toms River, NJ

A certification was issued covering all workers of the firm separated on or after June 16, 1985.

TA–W–17,530; Kaychester, Inc., Port Chester, NY

A certification was issued covering all workers of the firm separated on or after May 28, 1985 and before June 21, 1986.

TA–W–17,635; Jeanette Sheet Glass Corp., Jeanette, PA

A certification was issued covering all workers of the firm separated on or after June 24, 1985 and before July 31, 1986.

TA–W–17,574; CMT Industries, El Paso, TX

A certification was issued covering all workers of the firm separated on or after May 29, 1985.

TA–W–17,532; Rob Roy, Inc., York, AL

A certification was issued covering all workers of the firm separated on or after May 8, 1985 and before February 16, 1986.

TA–W–17,492; (The) Budd Co., Frankfort, OH

A certification was issued covering all workers of the firm separated on or after May 6, 1985.

TA–W–18,198; Clyde-AMCA International, Duluth, MN

A certification was issued covering all workers of the firm separated on or after September 10, 1985.

TA–W–17,413; Aluminum Co. of America, Massena, NY

A certification was issued covering all workers of the firm producing primary aluminum and aluminum ingots separated on or after April 28, 1985 and before June 30, 1986.

TA–W–17,928; Lianga Pacific, Inc., Tocoma, WA

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA–W–17,409; McQuay-Norris Manufacturing Div., SKF Industries, Bradford, TN

A certification was issued covering all workers of the Bradford, TN facility of the firm separated on or after April 23, 1985 and before October 1, 1986.

TA–W–18,608; McQuary-Norris Manufacturing Div., SKF Industries, St. Louis, MO

A certification was issued covering all workers of the St. Louis, MO facility of the firm separated on or after June 10, 1985 and before December 1, 1986.

TA–W–17,502; Axem Resources, Inc., Denver, CO, Belfield, ND, Casper, WY

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA–W–17,391; Mitchell Energy Corp., Midland, TX

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA–W–17,483; Pam Jo Manufacturing Co., East Newark, NJ

A certification was issued covering all workers of the firm separated on or after May 5, 1985 and before January 31, 1986.

TA–W–17,804; Buffalo Jewelry Case Co., Inc., Buffalo, NY

A certification was issued covering all workers of the firm separated on or after June 12, 1985 and before September 30, 1986.

TA–W–17,321; National Glove, Inc., Chestnut Street Plant, Mount Sterling, OH

A certification was issued covering all workers of the firm separated on or after October 15, 1985 and before May 31, 1986.

TA–W–17,321A; National Glove, Inc., Clark Street Plant, Mount Sterling, OH

A certification was issued covering all workers of the firm separated on or after October 15, 1985 and before May 31, 1986.

TA–W–17,555; Coseka Resources (U.S.A.) Limited, Denver, CO, Grand Junction, Co. Worland, WY, Costex Resources, Inc., Midland, TX

A certification was issued covering all workers of the firm separated on or after May 27, 1985.

TA–W–17,577; Hein Werner Corp., Waukeska, WI

A certification was issued covering all workers of the firm separated on or after April 6, 1986.

TA–W–17,426; Ashland Crafts, Inc., Ashland, KY

A certification was issued covering all workers of the firm separated on or after April 30, 1985 and before April 30, 1986.

TA–W–17,469; Well Made Dress Corp., Warren, RI

A certification was issued covering all workers of the firm separated on or after May 19, 1985. and

TA–W–17,500; Toby Fashions, Inc., Union City, NJ

A certification was issued covering all workers of the firm separated on or after May 13, 1985 and before May 14, 1986.

TA–W–17,462; Kaiser Steel Corp., Fabricated Products Group, Napa, CA

A certification was issued covering all workers of the firm producing large diameter steel pipe separated on or after January 1, 1986.

I hereby certify that the aforementioned determinations were issued during the period October 27, 1986 through October 31, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 4, 1986.

Marvin M. Fooks,

Director, Office of Trade adjustment Assistance.

[FR Doc. 86–25994 Filed 11–17–86; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–86–79–C]

Hegins Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Hegins Mining Company, Zerbe, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its No. 3 Slope (I.D. No. 36–01856)

located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures.

2. Petitioner states that application of the standard would result in a diminution of safety for the miners affected due to the space and clear area available.

3. The charging station is located at the botton of the slope in the west gangway. This area is limited in space. The only way to enclose this station with either steel or masonry and still maintain enough clear area to provide the required clearances that are necessary and provided presently would be to remove the solid rock support which would result in diminishing the roof support and exposing miners to hazardous conditions.

4. The mine is operated on one shift, the charging station is never activated during this time and the mining cycle is always completed a minimum of 5 hours prior to anyone re-entering the mine.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 18, 1986. Copies of the petition are available for inspection at the address.

Dated: November 6, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25987 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-135-C]

Kerr-McGee Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its Galatia Mine 56-1 (I.D. No. 11-02752) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage three-phase alternating-current circuits used underground shall contain a direct or derived neutral grounded through a suitable resistor at the power center, and a grounding circuit that will serve as a grounding conductor for the frames of all the electrical equipment supplied power from that circuit.

2. As an alternate method petitioner proposes to use a grounded wye system in lieu of a single phase system.

3. In support of this request, petitioner states that the power distribution system used in the underground shop for lighting, receptacles and small electrical equipment consists of a 112.5 KVA dry transformer, connected delta-wye and a 208/120V 3-phase panel with circuit breakers. All of the circuits from the panel to the lights, receptacles and motors are installed in conduit. The neutral of the 112.5 KVA transformer is connected to ground so that 120V is available from phase to neutral from the transformer.

4. Petitioner also states that safety switches have been added to the oil skimmer, sump pump and air compressor.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 18, 1986. Copies of the petition are available for inspection at that address.

Dated: November 6, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variance.

[FR Doc. 86-25988 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-115-C]

Orchard Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Orchard Coal Company, R.D. #4, Box 306, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescuers) to its Orchard Mine (I.D. No. 36-06132) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is always damp to wet. The only electrical equipment, which is a pump, is located at the foot of the slope.

3. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 18, 1986. Copies of the petition are available for inspection at that address.

Dated: November 6, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-25989 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-78-C]

Utah Power & Light Co.; Petition for Modification of Application of Mandatory Safety Standard

Utah Power & Light Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Wilberg Mine (I.D. No. 42-00080) located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the belt haulage entries not be used to ventilate active working places.

2. Petitioner states that application of the standard would result in a diminution of safety because the stability of roof and ribs under deep cover and multiple seam mining has a direct relation to the number of entries opened; the fewer entries opened, the more stable the rood and ribs and the less likely are pillar and crib crushes, squeezes, floor heaves, overrides and rib rolls. Use of two entries would also result in benefits to ventilation, fire control, and escapeway conditions.

3. As an alternate method, petitioner proposes to develop a two-entry system of mining for longwall panel development in which the belt haulage entry would act as a return air course, and for longwall panel retreat mining in which the belt haulage entry would act as an intake air course for longwall face ventilation.

4. In support of this request, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system will be installed in all belt entries used as intake or return air courses and at each belt drive and tailpiece located in intake air courses. The monitoring devices will be capable of giving warning of a fire for four hours should the power fail; a visual alert signal will be activated with the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and for monitoring electrical continuity to detect any malfunctions.

5. The CO system will be visually examined at least once each coal-producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

6. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

7. Until the CO detection system is installed and fully operational, CO will be monitored by a continuous CO station or by a qualified person with a hand-held CO detector.

8. Stoppings in all longwall development and retreat entries will be constructed of solid block with mortared joints.

9. For all longwall panels, a safe passageway under supported roof through tailgate entries or bleeders to a mine exit will be provided off the face on the tailgate side for emergencies. This passageway will be examined weekly by a qualified person. One hour self-contained self-rescuers will be carried by each person on a longwall panel or stored near the stageloader and stored on or near the face of the tailgate side of all longwall panels.

10. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 18, 1986. Copies of the petition are available for inspection at that address.

Dated: November 6, 1986.

Patricia W. Silvey,

Director Office of Standards, Regulations and Variances.

[FR Doc. 86-25990 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 86-129; Exemption Application No. D-6101 et al.]

Grant of Individual Exemptions; Fresh Retirement Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Fresh Retirement Plan (the Plan) Located in Salinas, CA

[Prohibited Transaction Exemption 86–129; Exemption Application No. D–6101]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the leasing, effective July 1, 1986, of a portion of a ranch, known as the Estel Ranch from July 1, 1986 until June 30, 1991, by the Plan to Bruce Church, Inc., a party in interest with respect to the Plan, provided the terms and conditions of the transactions are at least as favorable to the Plan as the Plan could obtain in dealing with an unrelated third party.

Effective Dates: The effective dates of this exemption are July 1, 1986 to June 30, 1991.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 9, 1986 at 51 FR 32139.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Meister-Neiberg Co. Pension Plan and Trust (the Plan) Located in Chicago, IL

[Prohibited Transaction Exemption 86–130; Exemption Application No. D–6502]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective May 14, 1986, to the loans (the Loans) by the Plan, for a period of 6 years, of up to 25% of its assets to Meister-Neiberg Co., the Plan sponsor, provided that the term of the Loans are at least as favorable to the Plan as those between unrelated parties would be.

For a more complete statement of the facts and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 9, 1986 at 51 FR 32143.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Customwood Manufacturing Company, Inc. Employee Defined Benefit Plan (the Plan) Located in Albuquerque, New Mexico

[Prohibited Transaction Exemption 86–131; Exemption Application No. D–6622]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale by the Plan of certain unimproved real property to Robert T. and Barbara J. Bogan, parties in interest with respect to the Plan; provided that such sale is on terms not less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant exemption refer to the notice of proposed exemption published on September 19, 1986 at 50 FR 33315.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

First National Bank of Mapleton Employees' Profit Sharing Retirement Trust (the Mapleton Plan) Located in Mapleton Depot, PA

[Prohibited Transaction Exemption 86–132; Exemption Application No. D–6669]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Mapleton Plan, for the total cash consideration of $610,879, of certain mortgage and vehicular loan receivables (the Receivables) to First National Bank of Mapleton, provided the amount paid for the Receivables is not less than fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 9, 1986 at 51 FR 32144.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Employees' Money Purchase Pension and Investment Plan of Ann Arbor Terminals, Inc. (the Plan) Located in Ann Arbor, MI

[Prohibited Transaction Exemption 86–133; Exemption Application No. D–6670]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan (the Loan) of $750,000 by the Plan to AA Development Corporation, a wholly-owned subsidiary of Ann Arbor Terminals, Inc., the Plan sponsor, provided that the terms and conditions of the Loan are at least as favorable to the Plan as those between unrelated parties would be.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 19, 1986 at 51 FR 33315.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Profit Sharing Plan for Employees of Regal Capital Company (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 86–134; Exemption Application No. D–6769]

Exemption

The restrictions of section 406 (a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of a parcel of unimproved real property (the Property) by the Plan to Howard E. Rachofsky (Mr. Rachofsky), a party in interest with respect to the Plan; provided that the sales price is equal to the greater of the fair market value of the Property on the date of sale or the total expenditures incurred by the Plan in connection with the acquisition and holding of the Property by the Plan, as calculated on the day of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 12, 1986 at 51 FR 32554.

For Further Information Contact: Angelena Le Blanc of the Department, telephone (202) 523–8196. (This is not a toll-free number).

Profit Sharing Plan and Trust of L.R. Mannausa, M.D., P.C. and Amended and Restated Pension Retirement Plan and Trust of L.R. Mannausa, M.D., P.C. (the Plans) Located in East Lansing, Michigan

[Prohibited Transaction Exemption 86–135; Exemption Application Nos. D–6677 & 6678]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plans of certain unimproved real property to Lawrence R. Mannausa, M.D., a disqualified person with respect to the Plans; provided that such sale is on terms no less favorable to the Plans than the Plans could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 9, 1986 at 51 FR 32145.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number).

National Sales, Inc. Employee Profit Sharing Plan (the Plan) Located in Jackson, Mississippi

[Prohibited Transaction Exemption 86–136 Exemption Application Nos. D–6715]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a certain parcel of improved real property located in Bossier City, Louisiana and a leasehold interest in another parcel of improved real property in Memphis, Tennessee (together, the Properties) to Business Advisors and Investors, Inc., a party in interest with respect to the Plan, provided that the sales price for each of the Properties is not less than the higher of either the total costs of such Property to the Plan or the fair market value of such Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 12, 1986 at 51 FR 32553.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number).

Profit Sharing Plan and Trust of Arasmith Manufacturing Company, Inc. (the Plan) Located in Rome, Georgia

[Prohibited Transaction Exemption 86–137; Exemption Application No. D–6751]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (Sale) by the Plan of a certain parcel of real property (the Property) to Stanley D. Arasmith and Cherie M. Arasmith, parties in interest with respect to the Plan, provided that the consideration paid for the Property is not less the greater of either $10,000 or the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 19, 1986 at 51 FR 33316.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or Code, including any prohibited transaction provisions ot which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fidiciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan s and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of November, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Adminsitration, U.S. Department of Labor.

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[Prohibited Transaction Exemption 86–128]

Class Exemption for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers

AGENCY: Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains an exemption which allows persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions under certain circumstances. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts when certain conditions are met. The exemption will replace Prohibited Transaction Exemption 79–1 and Prohibited Transaction Exemption 84–46. It affects participants and beneficiaries of, and fiduciaries with respect to, employee benefit plans which invest in securities, and other persons who engage in the described transactions.

EFFECTIVE DATE: The later of December 18, 1986, or the date on which the Office of Management and Budget approves the information collection requests contained in this exemption under the Paperwork Reduction Act of 1980.

FOR FURTHER INFORMATION CONTACT: Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523–9595 (not a toll free number) or Mark Greenstein, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 523–8671 (not a toll free number).

SUPPLEMENTARY INFORMATION: On January 24, 1985, notice was published in the **Federal Register** (50 FR 3427) of the pendency before the Department of Labor (the Department) of a proposed

class exemption to replace PTE 79–1 [1] and PTE 84–46,[2] which exempted certain transactions from the restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code) by reason of Code section 4975(c)(1) (A) through (F).[3] Notice was also given of the pendency before the Department of the proposed revocation of PTE 79–1 and PTE 84–46. The proposed class exemption was requested in part in an application filed by the Securities Industry Association (SIA) on behalf of its members, by letters to the Department dated November 29, 1982, April 22, 1983, May 24, 1983 and July 23, 1984. The proposal also contained provisions put forward by the Department on its own motion pursuant to its authority under section 408(a) of the Act and section 4975(c)(2) of the Code. Fifteen comments were received pursuant to those provisions, and in accordance with the procedures set forth in ERISA Procedure 75–1.[4] No requests for a hearing on the proposal were received.

Upon consideration of the entire record in the matter including the comments received, the Department is granting the exemption as proposed but with certain modifications.

Description of the Exemption

This exemption provides relief similar to that provided by Prohibited Transaction Exemption 79–1 (PTE 79–1) and Prohibited Transaction Exemption 84–46 (PTE 84–46), from the restrictions of section 406(b) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code. The exemption conditions the effecting or executing of securities transactions on behalf of a plan by a plan fiduciary upon the fiduciary's complying with a number of specific requirements designed to protect the interests of plan participants and beneficiaries. The exemption is generally available to fiduciaries with respect to employee benefit plans, except when a person is a fiduciary with respect to a plan by reason of being a plan trustee, plan administrator or sponsoring employer. The exemption is also available to managers of pooled investment funds in which plans invest, with certain restrictions applicable to those funds in which plans covering employees of the manager invest.

The exemption requires that a person engaging in a covered transaction must receive written authorization, executed in advance, from a fiduciary independent of such person. Thereafter, the authorized person must notify the plan at least annually that the authorization is terminable at will and without penalty by the plan. Such notice must include both a statement to the effect that failure to terminate the authorization will result in its continuation and a form on which to effect such a termination.

As in PTE 84–46, the exemption contains special authorization provisions and withdrawal rights for plans participating in pooled arrangements in order to accommodate the needs of funds or accounts in which the assets of many plans are collectively invested.

Persons effecting or executing securities transactions on behalf of plans pursuant to this exemption must disclose periodically certain information to the authorizing plan fiduciary. The exemption provides that a person engaging in covered transactions must furnish the authorizing fiduciary with either (1) confirmation slips containing the information described in Rule 10b–10 (17 CFR 240.10b–10) under the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. 78a *et seq.*, or (2) quarterly reports. The quarterly reports are compilations of the information that would have been provided by the confirmation slips and, specifically, must disclose the total of all charges incurred by the plan in connection with covered transactions during the reporting period, and the portion thereof that the authorized person has paid to others in connection with covered transactions. Annual reports are required of all persons engaging in covered transactions. The annual reports summarize the information required by the confirmation slips and, in addition, provide information regarding portfolio turnover and the use of brokerage commissions to pay for investment research services.

The exemption continues the recapture provisions of PTE 79–1. Under those provisions, any fiduciary may execute or effect securities transactions for a plan if he or she credits all profits earned in connection with the transaction to the plan. Persons generally excluded from coverage under the remainder of the exemption—that is, plan trustees, plan administrators and sponsoring employers—may engage in covered transactions on behalf of plans in such "recapture" situations.

In addition to special authorization provisions to accommodate the needs of pooled investment funds, the exemption provides, as to such funds in which plans covering employees of the pool manager or its affiliates participate, that the manager may engage in covered transactions on a "recapture" basis or may receive commissions based on the provision of brokerage services to the pool if the participation in the pool of plans covering employees of the pool sponsor is limited to twenty percent of the pool and the commissions received from all pools in which plans covering employees of the pool sponsor participate is limited to five percent of the aggregate amount of brokerage commissions received by the manager from all sources during the calendar year.

The exemption gives the authorizing fiduciary the right to request and receive any reasonably available information necessary for such fiduciary to determine whether the authorization should be made. In addition, the exemption places a corresponding duty on the authorized person to furnish the authorizing fiduciary with any additional information reasonably necessary and available to make this determination.

Finally, certain types of agency cross transactions are permitted under the exemption, under specified conditions.

Discussion of the Comments

A. Replacement of Annual Authorization Requirements

PTE 79–1 requires that persons engaging in a covered transaction on behalf of a plan obtain, at least annually, written authorization to engage in such transactions from an independent fiduciary with respect to that plan. In the interest of eliminating unnecessary costs to the authorized persons and the plans, it was proposed that this requirement be replaced with a provision whereby the independent fiduciary would be sent a form at least annually allowing it to terminate the authorization with respect to the plan; accompanying instructions would notify the plan that failure to return the form would result in continued authorization of the person to engage in covered transactions on behalf of the plan. Comments received on this aspect of the proposed exemption were generally favorable. Most commentators agreed with representations made by the SIA in

[1] 44 FR 5963 (January 30, 1979).

[2] 49 FR 22157 (May 25, 1984).

[3] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type granted herein to the Secretary of Labor. For the sake of clarity, the remainder of the preamble refers only to Title I of ERISA, although these references also apply to the corresponding provisions of section 4975 of the Code.

[4] 40 FR 18471 (April 28, 1975).

its exemption application that such a modification would reduce paperwork as well as other compliance expenses.

One commentator requested that, instead of sending a form, the authorized person be allowed to supply a simple notice containing the name and address of the person to contact if the plan desired to terminate the authorization. The commentator argued that this would reduce costs even further; it was acknowledged, however, that furnishing a form was not a significant burden. Accordingly, the Department believes that requiring the person seeking continued authorization to supply a termination form to the authorizing fiduciary, rather than requiring the authorizing fiduciary to prepare such a termination letter, is a proper allocation of the minimal burden involved.

In the final exemption, section III(g) of the proposed exemption, relating to the termination form, has been incorporated into section III(c) so that all conditions relating to authorization are grouped together.

B. Amendments to the Reporting Requirements

(1) Confirmation Slips and Quarterly Reports

Under PTE 79–1, authorized persons are required to supply the authorizing fiduciary with quarterly reports which disclose certain information related to the total of all transaction-related charges incurred by the plan in connection with covered transactions, the allocation of such charges among various persons, as well as a conspicuous statement about the negotiability of brokerage commissions and an estimate of future commission rates.

Pursuant to representations made by the SIA, the proposed exemption eliminated the requirements of PTE 79–1 as to the statement concerning the negotiability of brokerage commissions and the estimate of future commission rates. Various commentators agreed that the inclusion of these items in the quarterly reports provided little useful information to plan fiduciaries in evaluating the performance or services of the authorized persons.

The proposed exemption also provided that the authorized person was to supply the independent fiduciary with a "confirmation slip" for each securities transaction instead of quarterly reports. It was represented by the SIA that the contents of the confirmation slip would include information sufficient for the authorizing fiduciary to evaluate the execution services provided, and that the combination of confirmation slips and annual summaries would provide the plan fiduciaries with information more useful in monitoring the execution of securities trades than the quarterly reports had provided.

While many commentators agreed that confirmation slips would be as informative to the plans and less costly to the authorized person, several persons requested that the Department retain the quarterly reporting provision, or at least some other alternative, as a means of compliance. One commentator noted, for example, that where an investment adviser is required to maintain a segregated escrow fund (SEF) pursuant to Rule 206(4)–2 (17 CFR 275.206(4)–2), under the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.*, confirmation slips for securities transactions are issued only to the adviser and not to the fiduciary of a particular plan client of the adviser. It was argued that issuing confirmation slips to the authorizing fiduciary of each plan participating in the SEF would be much more burdensome than the quarterly reporting requirement of PTE 79–1. In consideration of these comments, the Department has decided to expand the availability of the option, proposed for pooled investment funds, to allow the provision to the authorizing fiduciary of either confirmation slips or quarterly reports.[5]

Those commentators who endorsed the "confirmation slip" aspect of the proposed exemption generally objected to the condition contained in proposed section III(e)(2), that the time of the transaction be included on the confirmation slip. Several commentators noted that Rule 10b–10 under the 1934 Act does not require that the exact time of the trade be included on the slip; rather, under that rule, the slips are to state that the time of the trade will be supplied upon the request of the customer. It was argued that supplying the independent fiduciary with the time of the trade provided no useful information and would entail costly adjustments to computerized reporting systems. Finally, one commentator argued that Rule 10b–10 has been revised and updated in recent years and most likely will continue to be modified in the future.

In consideration of these comments, the Department has modified this aspect of the exemption to state that confirmation slips provided to the authorizing fiduciary must contain the information described in Rule 10b–10 under the 1934 Act. This provision contemplates that, as the Securities and Exchange Commission (SEC) may amend and revise Rule 10b–10, the confirmation slips supplied to the authorizing fiduciaries pursuant to this class exemption will be correspondingly amended and revised, to the extent required by the changes in Rule 10b–10.

(2) Annual Reporting Requirements

(a) *Allocation of transaction related charges.* PTE 79–1 requires that the reports furnished to the authorizing fiduciary disclose both the total charges relating to covered transactions incurred by the plan during the period to which the report relates, as well as the amount of the transaction-related charges retained by the authorized person and the amount of such charges paid to other persons for execution or other services. The proposed exemption retained the requirement that this information be disclosed, either annually (for those issuing confirmation slips) or in quarterly reports otherwise. Some commentators stated that they had no objection to this requirement. A few commentators, however, objected to its inclusion. It was argued that the requirement provides the independent plan fiduciary with no useful information, as his or her concern should be with the aggregate charges and not with any additional breakdown. Another commentator analogized to the statutory reporting requirement under ERISA; it was noted that whereas section 103(e)(2) of ERISA requires a breakdown of how an insurance company disposes of premiums received from a plan, Congress imposed no such reporting requirements on broker-dealers.[6]

The Department is not persuaded by these arguments. While it agrees that this is information not required under ERISA's annual reporting requirements, the Department believes that it is entirely appropriate, in the context of this class exemption, to require disclosure of certain information by the exempted person so as to reduce the need for the independent fiduciary to make independent inquiry into the actions of that person. In this case, the breakdown of remuneration charges enables the authorizing fiduciary to ascertain whether, and if so, to what

[5] Persons who elect the quarterly reporting option may incorporate any such report into a contemporaneous summary provided pursuant to section III(f) of the exemption.

[6] Another commentator objecting to this provision argued that the breakdown of remuneration charges was information not currently required to be provided to "customers". The requirement to provide the breakdown to independent plan fiduciaries is, however, currently required under section II(e)(ii) of PTE 79–1.

extent the authorized person is the one actually performing the services for which the plan has contracted.[7] It appears to the Department that such information would be helpful to independent fiduciaries generally in their evaluation of the management and brokerage services provided. Accordingly, the Department has decided to retain this requirement.[8]

(b) *Disclosure of charges for research and other services.* The proposed exemption contained a provision requiring annual disclosure of whether any transaction-related charges were attributable to consideration for research, other nonbrokerage services or goods and, if so, a detailed description of such services or goods. Many commentators objected to this section of the proposal. Some commentators argued that the Department lacks the legal authority to require such disclosure and that only the SEC has jurisdiction over such matters. Others interpreted this section as inhibiting the payment of monies for research services in contravention of section 28(e) of the 1934 Act. Several commentators represented that compliance with the proposed requirement was impracticable because research and other services may not be directly attributable to specific trades for specific accounts.

In adopting amendments to several forms and a proxy rule under the Investment Company Act, the SEC addressed similar concerns [9] while still reflecting its longstanding position that "such brokerage placement practices, although permissible, should be disclosed to investors." [10] Amendments were adopted which required disclosure of whether persons acting on behalf of an investment company are authorized to pay a broker a brokerage commission in excess of that which another broker might have charged for effecting the same transaction, in recognition of the value of brokerage or research services provided by the broker.[11]

In addition, amendments to the "brochure rule" under the Investment Advisers Act of 1940 required certain investment advisers to provide a narrative description about their brokerage placement practices.[12]

Several commentators responding to the proposed exemption recommended that the Department rely on the disclosures required by the SEC in the rules discussed above.

In consideration of the comments, the Department has decided to modify the reporting provisions relating to charges that are attributable in part to consideration for goods or nonbrokerage services.

Rather than impose an annual reporting requirement, the final exemption requires that, as part of the initial authorization, the person requesting authorization provide the authorizing fiduciary with a description of the person's brokerage placement practices. Compliance with the brokerage placement practice disclosures required by Form ADV of the Advisers Act will satisfy this requirement of section III(d) of this exemption.[13] Subsequent to this initial disclosure, additional information regarding the person's brokerage placement practices need only be supplied in the summary provided pursuant to section III(f)(3) of the exemption when there is a material change in those practices.

As to pooled accounts, the final exemption has been amended to include a parallel reporting provision in section IV(d)(1)(B). Under this provision, the person requesting authorization must provide the authorizing fiduciary with a description of the person's brokerage placement practices along with other information necessary to determine whether the authorization should be made. Material changes in such brokerage placement practices must be disclosed to authorizing fiduciaries in the summaries provided pursuant to section III(f) of the exemption.

The Department notes that sections III(d) and IV(d)(1)(B) of the exemption continue the requirements of PTE 79–1 and PTE 84–46 that the authorized person is required to furnish the authorizing fiduciary with any reasonably available information necessary to determine whether the authorization should be made or continued. The Department further notes that, under ERISA section 404(a)(1)(B), the authorizing fiduciary has an obligation to be prudent in the selection, and in monitoring the performance of, the investment manager authorized to provide services under the exemption.[14] In this regard, the authorizing fiduciary may wish to request more information from the person concerning brokerage placement practices than is supplied with the initial authorization materials in order to satisfy his or her duties as the authorizing fiduciary.

With respect to the comments questioning the Department's authority to impose these disclosure requirements, the Department notes that the transactions covered by the exemption would, but for the exemption, be proscribed by ERISA's prohibited transaction provisions, for reasons that are unrelated to section 28(e). In the Department's view, the authority to grant exemptions from those provisions carries with it the authority to grant exemptions subject to conditions that the Department determines to be appropriate.

(c) *Disclosure of portfolio turnover.* Section III(f)(4) of the proposed exemption provided that the annual summary furnished to the authorizing fiduciary contain a calculation of the annualized portfolio turnover ratio as a percentage of the plan assets consisting of securities or cash for which the authorized person had investment discretion. That section provided a formula by which to make this calculation.

Several persons commented on this aspect of the proposed exemption. Some argued that the formula was so simple that the information it provided would be at best meaningless, and at worst

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[7] The Department notes that, as the definition of "person" includes affiliates of the person, the exempted person need not disclose a breakdown of amounts paid to its affiliates. The Department also notes that, in other cases where precise figures are not available, a reasonable approximation of the allocation of fees will satisfy this condition (*See*, Preamble to PTE 79–1, 44 FR at 5966 (footnote 15)).

[8] One commentator stated that while it is feasible to provide this information, it is "not possible" to do so on the confirmation slips. Disclosure of this information on the confirmation slips themselves is not required; the remuneration breakdown is to be provided annually (for those supplying confirmation slips) or in quarterly reports for others.

[9] In 1976, the SEC had proposed a rule (proposed Rule 28e(2)–1 under the 1934 Act) which would have required investment advisers and others to disclose certain information concerning research services obtained in return for brokerage commissions, including a description of such services and an estimate of their fair market value. In addition, the SEC specifically invited comments on the feasibility and desirability of requiring disclosure of specific dollar amounts paid through brokerage commissions. *See* SEC Release Nos. 33–5772, 34–13024, IC–9547, IA–554 (41 FR 53356, December 6, 1976).

In response to this proposed rule, the Commission received numerous comments similar to those received by the Department: that it was impossible to attribute specific research to specific trades, that it was not practical to place a value on those services, and that it was not feasible to separate commissions into research and brokerage charges. SEC Release Nos. 33–6019, IC–10569, IA–665 (44 FR 7864, February 7, 1979). *See also*, SEC Release Nos. 34–15541, IA–664 (44 FR 7870, February 7, 1979).

[10] 44 FR at 7864.

[11] *See, e.g.*, 17 CFR 270.20(a)(7)(vi).

[12] *See* 17 CFR 275.204–3. *See also*, Securities and Exchange Commission Release No. IA–991 (50 FR 42903, October 23, 1985).

[13] However, under this exemption, such a description must be supplied regardless of whether the authorized person is subject to the "brochure rule."

[14] *See generally*, discussion of ongoing responsibilities of a fiduciary at 29 CFR 2509.75–8, FR–17, and, more particularly, ERISA Technical Release 86–1, issued May 22, 1986.

misleading, to the authorizing fiduciary. Others stated that the calculation was so complex as to be burdensome for the authorized person. One commentator suggested that the final exemption contain a definition of "portfolio turnover" consistent with that contained in Form N–SAR pursuant to the Investment Company Act of 1940. [15]

In consideration of these comments, the Department has decided to eliminate the requirement that the specific formula as set forth in this exemption must be used in computing the portfolio turnover ratio. Instead, the Department has determined that the authorizing fiduciary and the manager should be permitted to agree on a different method of computation that is reasonably designed to provide the authorizing fiduciary with the information needed to assist in discharging its duty of prudence. However, the formula as proposed, with certain technical modifications described below in response to the comments received, remains as a "safe harbor" method of satisfying the requirement of section III(f)(4).

The Department has modified the formula to eliminate from the computation the effects of short-term cash management—that is, management of debt securities with maturity at acquisition of one year or less. This was done to eliminate a "masking" effect that might otherwise result from high portfolio turnover ratios that can be the result of short-term cash management. In addition, explicit instructions for computing the "monthly average of the market value of the portfolio" have been provided. Both of these modifications were made to conform the method of computation to the method set forth in Form N–SAR, cited above. The formula does depart from that set forth in Form N–SAR, however, in that it adds an annualizing factor to account for the possibility that managers may serve for periods of varying durations.

As adopted, the "safe harbor" formula provides that a non-annualized portfolio turnover ratio is first calculated, by dividing the lesser of the aggregate dollar amounts of purchases or sales of portfolio securities during the relevant periods by the monthly average of the market value of the portfolio securities during such periods. The monthly average is obtained by totaling the market values of the portfolio securities as of the beginning and end of each period and as of the end of each month that ends within such periods, and dividing the sum by the number of valuation dates so used. As is noted above, all debt securities whose maturities at the time of acquisition were one year or less are excluded from both the numerator and the denominator. The annualized portfolio turnover ratio is then obtained by multiplying the portfolio turnover ratio described above by an annualizing factor. The annualizing factor is obtained by dividing the number twelve by the aggregate duration of the relevant management periods expressed in months (and fractions thereof).

The Department has added a section to the final exemption, (section V), containing examples which illustrate the use of this formula. The Department believes that, with the adoption of the formula as a "safe harbor", affected parties are provided with both the certainty and the flexibility necessary to comply with this condition of the class exemption.

In response to another comment, the Department has eliminated the requirement to supply the computation in cases where the authorized person has not, during the period covered by the report, exercised any discretionary authority over trading in the account. In those cases, the Department has concluded that the potential for self-dealing by means of causing the plan involved to engage in excessive trading, thereby generating unwarranted brokerage commissions, is substantially reduced if not eliminated. In other cases, however, the Department has decided to retain the requirement. The commentators who generally objected to the requirement argued that many factors, such as the types of securities contained in the portfolio and a given plan's investment objectives, would substantially affect the degree of portfolio turnover. The Department believes that a plan's authorizing fiduciary should be aware of these factors and, therefore, will be able to evaluate the portfolio turnover computation in light of them. Authorized persons may provide whatever supplemental explanatory material they believe to be necessary to make the calculation more meaningful and not misleading to the authorizing fiduciary in the annual report.

C. Clarification of the Scope of the Exemption

PTE 79–1 provides an exemption from both sections 406(a) and 406(b) of ERISA. The proposed exemption provided relief only from the restrictions of section 406(b). The reason for this modification is that the Department believes that any relief from section 406(a) that may be necessary in connection with transactions covered by this exemption is provided by the statutory exemption for the provision of services to a plan by a party in interest contained in section 408(b)(2) of ERISA.

Several commentators objected to this aspect of the proposed exemption. Some of these commentators included an argument that section 408(b)(2) provides an exemption from all of section 406, not just 406(a). The Department does not share this view of the scope of section 408(b)(2). [16]

Neither this class exemption, nor PTE 79–1 or PTE 84–46, provides relief for direct or indirect sales, or other underlying transactions, described in section 406, in which a plan and a party in interest participate. Rather, this exemption provides relief from the restrictions of section 406(b) only for those service transactions that are covered by section II of the exemption and the receipt of compensation therefor by a plan fiduciary. For example, if a plan fiduciary purchases securities from a person he knows to be a party in interest for the plan in an agency cross transaction and receives a commission from the party-in-interest for effecting that transaction, this exemption provides relief from section 406(b)(3) for the receipt of the commission by such fiduciary (provided that the conditions of the exemption are met) but does not provide relief from section 406(a)(1)(A), which generally prohibits a fiduciary with respect to a plan from causing the

[15] *See* SEC Release No. 34–21633, IC–14299, dated January 4, 1985 (50 FR 1442, 1479, January 11, 1985).

[16] If that argument were correct, the necessity for this exemption would be called into question. Regulations promulgated pursuant to section 408(b)(2) provide, however, that that section does not provide an exemption for acts described in section 406(b). These regulations have been at issue in litigation and have been upheld. In *Marshall* v. *Kelly*, 465 F. Supp. 341 (W.D. Okla., 1978), the court held:

> Section 408(b)(2) of ERISA, 29 U.S.C. 1108(b)(2), provides no exemption from the provisions of section 406(b). Although the language of section 408(b)(2) appears to provide an exemption from all of the prohibitions of section 406, a closer look at the statutory language and purpose has led the Department of Labor to the position expressed in an interpretative regulation, 29 CFR 2550.408b–2 (a) and (e), that section 408(b)(2) provides no exemption from the provisions of section 406(b). Since this construction by the agency charged with the enforcement of ERISA resolves inconsistencies in the statutory language and preserves a fundamental purpose of ERISA, i.e. to prevent a fiduciary from acting in matters in which he has an interest which might affect his judgment, this Court should give it great weight, *Udall* v. *Tallman*, 380 U.S. 1 (1965). In addition, the Court has itself reviewed the statutory language and legislative history and has independently concluded that section 408(b)(2) should not be construed to provide an exemption from the prohibitions of section 406(b).

See also, *Gilliam* v. *Edwards*, 492 F. Supp. 1255 (D.N.J. 1980).

plan to engage in a transaction that constitutes a direct or indirect sale or exchange of any property between a plan and a party in interest. In the absence of other exemptive relief, this latter transaction would be prohibited.

This exemption specifically excludes relief for acts of "churning." In this regard, section II(a) of the proposed exemption stated that relief was provided for the described transactions, "but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency."

Several commentators objected to this language. Some commentators noted that whether an account is in fact "churned" depends on all the facts and circumstances, not merely the amount or frequency of securities trades. Others stated they feared that the Department would be developing or imposing a set of standards regarding what constitutes "churning" that differs from standards that would apply under the federal securities laws.

Upon consideration of the comments, the Department has decided to adopt the provision as proposed. The conduct of a plan fiduciary in managing a securities account must be measured according to ERISA's fiduciary responsibility standards; excessive trading in the account is one respect in which the fiduciary might breach the general fiduciary responsibilities, including that of prudence, imposed on him or her by section 404(a)(1) of ERISA. While the Department does not consider it appropriate to condition the availability of the exemption on adherence by the fiduciary to all facets of these fiduciary duties (including those related to the merits of the underlying transaction), the generation of excessive fees through inappropriately high portfolio turnover rates is an abuse with which the Department is concerned in implementing this class exemption. Thus, the Department could conclude that a fiduciary had violated ERISA's prudence requirement where an account had been "churned", despite the fact that the resulting composition of the plan's portfolio, viewed by itself without regard to the impact of excessive transaction costs, was beyond challenge. The Department does not wish to suggest that the exemption in any way relieves fiduciaries of the obligation not to cause the plan to pay excessive transaction costs.[17]

[17] One commenter argued that, in the case where a participant directs trading in his account, the fiduciary following those instructions should not be liable for any excise taxes that might be imposed if this condition of the exemption is not satisfied. The commentator correctly pointed out that while section 404(c) of ERISA (relating to relief from fiduciary liability in the case of participant-directed pension plan accounts) might provide relief from the prohibited transaction provisions of Title I of ERISA in such cases, there is no counterpart in the Code to section 404(c). If the fiduciary does not use its authority to cause the plan to pay additional fees for brokerage services, this exemption from the provisions of section 406(b)(1) of the Act and its counterpart in the Code is not necessary. See note 22, *infra*. The situation described by the commentator, however, also raises questions under section 406(a) of the Act and its counterpart in the Code. The extent to which the statutory exemptions in the Act and Code for the provisions of services apply to the situations described by the commentator is an interpretive matter that depends, in part, on the facts and circumstances surrounding the series of transactions directed by the participant. It should also be noted that, pursuant to section 102(a)(iii) of Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), the authority to grant exemptions from the excise taxes imposed by section 4975 ". . . with respect to transactions that are exempted by subsection 404(c) from the provisions of Part 4 of . . . Title I of ERISA . . ." was not transferred from the Internal Revenue Service to the Department. See also, however, PTE 75–1 (40 FR 50845, Oct. 31, 1975), Section I(b). PTE 75–1 was issued by both the Department and the Internal Revenue Service.

D. Agency Cross Transactions

The proposed exemption contained specific provisions relating to the conditions under which an authorized person could effect or execute agency cross transactions on behalf of its plan clients. Generally, an agency cross transaction is a transaction in which both the buyer and the seller of a security use the same broker. It was represented by the applicant that such transactions would save plans money and that SEC regulations are sufficient to protect plans from any potential abuse. The proposed conditions were derived from two SEC rules: (1) Rule 206(3)–2 under the Investment Advisers Act of 1940 (17 CFR 275.206(3)–2), and (2) Rule 17a–7 under the Investment Company Act of 1940 (17 CFR 270.17a–7).

As a general matter, the Department received no comments objecting to the inclusion in the exemption of the section on agency cross transactions. Rather, comments were addressed to particular aspects of that section of the proposed exemption; these comments are discussed below.

(1) *Price.* Section III(h)(5) of the proposed exemption required that agency cross transactions be effected at a price "no less favorable to any plan involved in the transaction than the 'current market price' of the security, as . . . defined in Rule 17a–7(b)." That subsection of Rule 17a–7 contains four possible means of determining "current market price" depending on such factors as whether the security is a reported security and whether its principal market is an exchange.

Four commentators objected to this subsection of the proposed exemption. It was argued that the condition in the proposed exemption would operate so as to require a broker-dealer to execute such transactions at the last sale price for certain reported securities, unless there were no reported transactions on that day, which could result in a transaction taking place at a price either higher or lower than the current market price for those securities. The commentators suggested that this condition be revised to require that agency cross transactions be effected or executed at any price at or between the current bid and current ask quotations. The commentators represented that their proposed condition, in conjunction with section III(h)(4) of the proposed exemption (which limits agency cross transactions to situations where market quotations for a security are readily available), would be sufficiently protective of the interests of the plan.

The Department agrees with the commentators' concerns. The Department has, therefore, adopted the suggested revision to the price condition, with the additional condition that the bid and ask quotations be independent.

(2) Transactions Where Discretion Exists on Both Sides

The preamble to the proposed exemption stated that relief was neither requested nor proposed by the Department to extend to agency cross transactions where a broker-dealer has discretionary authority or renders investment advice with respect to both sides of the transaction, in view of the additional potential for abuse that exists in such situations.

In response to this aspect of the proposed exemption, the Department received two comments. Specifically, it was requested that the proposed exemption be revised to permit agency cross transactions between two employee benefit plans, or between a plan and a mutual fund, when the transaction is recommended or effected by a person who serves as an adviser or fiduciary to both parties to the transaction. It was argued that normal portfolio adjustments necessary for liquidity needs as well as individual and overall investment strategies may result in the not unusual situation where an adviser/fiduciary has one client account for which he wishes to sell a particular security at the same time that he has another client account for which he wishes to buy that same security. It was represented that extending relief under the proposed exemption to allow the

authorized person to effect the transaction for both sides would be beneficial to plans, both because, under the commentators' proposals, only limited fees would be charged and because the buyer and seller may obtain a better, less distorted price than that otherwise available on the open market.

Both commentators suggested that exemptive relief modeled after Rule 17a–7 of the Investment Company Act of 1940 would safeguard plans involved in such transactions against potential abuse. As to mutual funds, that rule provides an exemption for certain purchase or sale transactions between a mutual fund and certain "affiliated persons" thereof under specified conditions. Those conditions include quarterly determinations by the mutual fund's board of directors (including a majority of the directors who are not "interested persons" of the fund) that all purchases or sales made during the quarter pursuant to the Rule were in compliance with procedures reasonably designed to provide that the requirements of the Rule are met. Further, subsection (d) of the Rule provides that "no brokerage commission, fee (except for customary transfer fees), or other remuneration [may be] paid in connection with the transaction." One commentator noted, however, that "customary transfer fees" may be indicated as "commissions" on the brokerage confirmation. This commentator further advised that "broker-dealers may charge what is termed 'commissions' for an agency cross transaction since broker-dealers' costs and risks associated with such transactions may fluctuate with the amount of securities involved."

The other commentator stated that it was unable to define the term "customary transfer fee". It did state that such fees were understood to include such things as custodial transaction fees, out-of-pocket expenses, transfer agent transaction fees, and charges incurred pursuant to governmental reporting requirements. This commentator advised, however, that the Department should not attempt to define or limit the type of fees that may be charged in such transactions in order not to restrict unnecessarily the flexibility of investment advisers. The commentator also argued against restriction of the expanded relief it requested to transactions involving reported securities or securities principally marketed on an exchange.

After consideration of these comments, the Department has decided not to extend relief in the final exemption to agency cross transactions where the authorized person has discretionary authority with respect to both sides of the transaction.

In addition to uncertainty regarding both the fees that would be charged for such transactions and the bases for those fees, the comments received indicate that strict application of Rule 17a–7's pricing provisions may not be appropriate in all cases. The requested augmentation of the exemption, even if modified to allow the pricing flexibility that appears to be necessary or at least desirable, as is discussed above, would provide no assurance that plans that are parties to the transaction—possibly on both sides—would be obtaining a price commensurate with what arms'-length bargaining would have produced. Accordingly, the Department has not been persuaded that, on balance, the potential benefits that may inure to plans outweigh the possibility of abuse that exists when a plan fiduciary acts on behalf of both the plan and a party whose interests are adverse to those of the plan.

E. Recapture Provision

Section IV(c) of the proposed exemption continued the provision from PTE 79–1 which allows a fiduciary to effect securities transactions for a plan with respect to which the fiduciary is a plan trustee, plan administrator or employer of employees covered by the plan, provided that all profits resulting from the brokerage function are recaptured on behalf of the plan. The Department received two comments requesting modification of sections III(a) and IV(c) of the proposal so as to allow plan trustees to engage in covered transactions on a non-recapture basis.

The Department received one comment requesting that all trustees, including those with discretion with respect to plan investments, be allowed to engage in covered transactions. It was argued that PTE 79–1 and the exemption as proposed placed banks at a competitive disadvantage, "for no apparent reason", in relation to both insurance companies and investment advisory affiliates of broker-dealers, where a plan sponsor has "elected the stability, experience, and security offered . . . by a bank trustee."

The Department has previously expressed concern that, as a general matter, the position of a plan trustee may carry with it so great an influence over the general operation of the plan that an independent fiduciary may not be effective in examining critically and objectively multiple service arrangements.[18]

Although that comment did not address the Department's previously expressed concern, another commentator requested that the Department clarify the definition of trustee by explicitly excluding custodial or "non-discretionary" trustees who possess no investment discretion with respect to any assets of the plan. Custodial functions were described as including the provision of plan documents and necessary amendments to comply with applicable law, the safekeeping of securities, the disbursement of benefits, and the reporting of information required by the Internal Revenue Service. This commentator noted that the Department's Advisory Opinion #82–12A discussed the situation where, by operation of Code sections 401(f) or 408(h), a custodial account may be treated as a qualified trust, and as a result, the custodian is treated as the trustee of such account. On the basis of the representations made in that opinion request, the Department concluded that the custodian of the participant-directed plans would not be treated as a trustee for purposes of PTE 79–1.

This commentator also noted that the Comptroller of the Currency allows banks without fiduciary powers to "combine the functions of custodian and the purchasing of securities upon the direction of the principal." [19] In addition, the Federal Deposit Insurance Corporation recently amended its rules to permit certain banks that do not exercise trust powers to act as trustee or custodian of Individual Retirement Accounts and Simplified Employer Pensions under certain conditions; these conditions include: (1) The bank's duties as trustee or custodian must be essentially custodial in nature, (2) the bank must invest the funds from such plans only in its own time or savings deposits or in any other assets at the direction of the customer, (3) the bank may not exercise any investment discretion or provide any investment advice with respect to such accounts, and (4) the bank's acceptances of such accounts without trust powers must not be contrary to state law. [20]

In addition, this commentator argued that the Department's rationale for excluding trustees from those persons eligible to engage in transactions under

[18] *See*, preamble to PTE 79–1, 44 FR at 5964 (footnote 11).

[19] Opinion of the Comptroller, November 21, 1983.

[20] 12 CFR 333.101(b), 50 FR 10753 (March 18, 1985).

this exemption—that is, that such persons may have so great an influence over the operation of the plan that adequate independent examinations of any multiple service arrangement involving the trustee may not exist—was not applicable in situations where a trustee has very little or no discretion respecting the investment of the assets of the plan. On the basis of these comments, the Department has concluded that persons who are trustees, but whose duties are limited in a manner similar to those of the non-trustee custodians discussed above, should be excepted from the condition that the person engaging in the covered transaction must not be a plan trustee.[21] Section III(a) of the exemption, as adopted, excludes "nondiscretionary trustees" from that condition, and new section I(i) defines the term "nondiscretionary trustee" in the same manner as that term is defined in PTE 77–9 as amended.[22] In other respects, the Department has decided to retain the condition of PTE 79–1 that trustees may provide brokerage services under this exemption only in recapture situations.[23]

F. Special Rule for Pooled Funds

PTE 84–46 allows an affiliate of an insurance company maintaining a pooled separate account to provide brokerage services for that account. The authorization provisions of that exemption are designed to accommodate the needs of funds or accounts in which the assets of many plans are collectively invested. The proposed exemption made these alternative methods of authorization available to any account or fund for the collective investment of the assets of more than one plan without requiring the recapture of brokerage profits on behalf of that account or fund. The Department received no criticism of this provision and thus has retained it in the final.

Under PTE 79–1 and the exemption as proposed, persons who are plan trustees, plan administrators, or employers of employees covered by a plan, are generally prohibited from engaging in covered transactions on behalf of such plans other than in recapture situations. In response to that proposal, the Department received one comment requesting that the sponsors of pooled accounts or their affiliates be allowed, under certain conditions, to engage in covered transactions on a non-recapture basis where plans covering employees of the pool sponsors or their affiliates (in-house plans) participate in the pool. The suggested conditions included that the participation of in-house plans in a pool be limited to a certain percentage of the fair market value of the total assets of the pool. Furthermore, the commentator noted that limits could be placed on the total commissions received from all such pooled funds in which in-house plans participate. It was asserted that the interests of the in-house plans would be adequately protected because independent investors representing a substantial portion of the assets of a pooled fund would be scrutinizing the provision of brokerage services by the affiliated broker-dealer. In addition, the commentator noted that a limitation on commissions receivable with respect to pools in which in-house plans participate, similar to that contained in, for example, ERISA section 408(b)(5), would provide additional protection to such plans.

It was argued that the Department has granted similar exemptive relief in the past. In PTE 77–3, the Department exempted from the prohibited transaction provisions of the Act and the Code the acquisition and sale of shares of a mutual fund by the fund's in-house plan.[24] This relief, in turn, was modeled on the statutory exemptions for banks and insurance companies contained in ERISA sections 408(b) (4) and (5). As the Conference Report explains in relation to those statutory exemptions, it would be contrary to normal business practice for a bank to invest the assets of its in-house plan in another bank, or for a plan covering employees of an insurance company to purchase its insurance from another company.[25]

Based on these comments, the Department has decided to modify the exemption in the manner requested so as to allow in house plans to participate in such pools subject to certain protective conditions. Upon consideration, the Department has determined that a five percent limitation on the total commissions received with respect to those pooled funds in which in-house plans participate is an appropriate limitation.[26] In addition, the Department believes that further protection would be provided to such in-house plans where the value of their investment is limited to twenty percent of the fair market value of the pool, as determined on the first day of each fiscal year of the pool. The twenty percent figure is consistent with a similar condition in PTE 84–14, Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers (49 FR 9494, March 13, 1984), and adequately addresses the concerns expressed by the commentator. A determination of whether a pooled fund meets the twenty percent limit during the course of the pool's fiscal year must be made in a manner similar to that by which the percentage of a plan's holding of employer securities is made under the Department's regulations at 29 CFR 2550.407a–2 and 2550.407a–3; that is, (1) an in-house plan may not acquire any additional interests in a pool if, immediately after such acquisition, the fair market value of all in-house plans' interests would exceed 20% of the fair market value of the total assets of the pool; and (2) such pool fund will be in initial compliance with the 20% requirement for a fiscal year if it satisfies the requirement on the first day of that fiscal year notwithstanding any subsequent increase in such percentage limitation which occurs merely as a result of the withdrawal of other participants in the pool.

G. Transitional Rule and Effective Date

The proposed exemption provided that the replacement exemption would become effective thirty days after its publication in the the **Federal Register**. Further, the proposal indicated that the

[21] The Department will consider, for purposes of this exemption, the power to amend plan documents solely to comply with changes in applicable law as a non-discretionary trustee or custodial function. The Department expresses no opinion, however, on whether the power to amend plan documents in a more substantive manner would indicate the opposite result.

[22] 49 FR 13208 (April 3, 1984). The distinction between "nondiscretionary" trustees and trustees generally was made in that exemption for reasons similar to those for which it is made here.

[23] It should be noted, however, that the Department has issued two advisory opinions which held that the subject banks would not violate ERISA section 406(b)(1) by the use of their in-house brokerage services in circumstances where (1) the banks would effect securities transactions only upon the express direction of a participant or an independent investment manager, and (2) the banks did not exercise any of the authority, control or responsibility that made them fiduciaries to cause the plans to pay any additional fees for the provision of such services. *See* DOL Advisory Opinions Nos. 85–15A, 85–16A (April 4, 1985). In other cases, section 404(c) of ERISA might provide adequate relief from the prohibited transaction provisions of Title I. However, it should be noted that the authority to grant administrative exemptions from the corresponding provisions of section 4975 of the Code remains with the Internal Revenue Service under Reorganization Plan No. 4 of 1978, there being no Code counterpart to section 404(c).

[24] Class Exemption Involving Mutual Fund In-House Plans, 42 FR 18734 (April 8, 1977).

[25] ERISA Conference Report, H.R. Rep. No. 93–1280, 93d Cong., 2d Sess. 313, 314 (1974).

[26] *See also*, PTE 79–60, 44 FR 59018 (October 12, 1979).

Department intended to revoke PTE 79–1 and PTE 84–46 at the same time. The Department received several comments requesting clarification of the effective date provisions, as well as comments requesting an additional period of time before the revocation of the existing class exemptions.

Two commentators requested that the annual fiduciary authorizations obtained pursuant to PTE 79–1 be allowed to satisfy the initial authorization requirement of the new exemption without any further action by the authorized person. It was suggested that at the expiration of this annual authorization, the authorized person would then be required to include as part of the next annual report to the independent plan fiduciary all the information that would be required under the new exemption.

Another commentator requested that PTE 79–1 not be revoked for at least six months so as to allow time for agreements and contracts executed pursuant to that exemption to be modified in order to comply with the new exemption.

In consideration of these comments, the Department has made the following determinations: An authorized person may continue to rely on authorizations obtained pursuant to PTE 79–1 or PTE 84–46 to engage in covered transactions under the new exemption, provided that: (1) The authorization complies with the applicable authorization requirements of the new exemption, and (2) before the authorized person begins operating under the new exemption, the authorizing fiduciary is provided with the information required by section III(d) or IV(d)(1)(B), whichever is applicable (including a copy of this exemption) and the form for terminating the authorization. In addition, PTE 79–1 and PTE 84–46 will not be revoked until April 1, 1987, so as to allow authorized persons and authorizing fiduciaries ample time in which to adjust their authorization and reporting procedures. It should be noted, however, that this provision does not operate so as to relieve persons who continue to act pursuant to the "old" exemptions from any of the conditions imposed thereunder, including the reporting provisions. Authorized persons are reminded that they are required, under PTE 79–1 and PTE 84–46, to supply reports with respect to any three-month period in which they engaged in any covered transactions; upon availing themselves of the new exemption, therefore, such persons must still send the authorizing fiduciary any reports required under the old exemptions.

In addition, the effective date of the exemption has been changed to the later of thirty days after publication in the **Federal Register** or the date on which the Office of Management and Budget approves the information collection requests contained in the exemption under the Paperwork Reduction Act of 1980. When the exemption is effective, the Department will publish a notice in the **Federal Register** notifying interested persons of that fact.

H. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the disclosure provisions that are included in this exemption have been submitted to the Office of Management and Budget.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act. That section requires, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act. This exemption also does not affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of participants and beneficiaries.

(2) This exemption is supplemental to, and not in derogation of, any other provision of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record including the written comments submitted in response to the notice of January 24, 1985, the Department makes the following determinations:

(a) The class exemption set forth herein is administratively feasible;

(b) It is in the interests of plans and of their participants and beneficiaries; and

(c) It is protective of the rights of participants and beneficiaries of plans.

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1.

Section I: Definitions and Special Rules

The following definitions and special rules apply to this exemption:

(a) The term "person" includes the person and affiliates of the person.

(b) An "affiliate" of a person includes the following:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, the person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or sister, of the person;

(3) Any corporation or partnership of which the person is an officer, director or partner.

A person is not an affiliate of another person solely because one of them has investment discretion over the other's assets. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) An "agency cross transaction" is a securities transaction in which the same person acts as agent for both any seller and any buyer for the purchase or sale of a security.

(d) The term "covered transaction" means an action described in section II (a), (b) or (c) of this exemption.

(e) The term "effecting or executing a securities transaction" means the execution of a securities transaction as agent for another person and/or the performance of clearance, settlement, custodial or other functions ancillary thereto.

(f) A plan fiduciary is independent of a person only if the fiduciary has no relationship to or interest in such person that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) The term "profit" includes all charges relating to effecting or executing securities transactions, less reasonable and necessary expenses including reasonable indirect expenses (such as overhead costs) properly allocated to the performance of these transactions

under generally accepted accounting principles.

(h) The term "securities transaction" means the purchase or sale of securities.

(i) The term "nondiscretionary trustee" of a plan means a trustee or custodian whose powers and duties with respect to any assets of the plan are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this exemption, a person does not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Section II: Covered Transactions

Effective the later of December 18, 1986, or the date on which the Office of Management and Budget approves the information collection requests contained in this exemption under the Paperwork Reduction Act of 1980, if each condition of section III of this exemption is either satisfied or notapplicable under section IV, the restrictions of section 406(b) of ERISA and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (E) or (F) or the Code shall not apply to—

(a) A plan fiduciary's using its authority to cause a plan to pay a fee for effecting or executing securities transactions to that person as agent for the plan, but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency;

(b) A plan fiduciary's acting as the agent in an agency cross transaction for both the plan and one or more other parties to the transaction; or

(c) The receipt by a plan fiduciary of reasonable compensation for effecting or executing an agency cross transaction to which a plan is a party from one or more other parties to the transaction.

Section III: Conditions

Except to the extent otherwise provided in section IV of this exemption, section II of this exemption applies only if the following conditions are satisfied:

(a) The person engaging in the covered transaction is not a trustee (other than a nondiscretionary trustee) or an administrator of the plan, or an employer any of whose employees are covered by the plan.

(b) The covered transaction is performed under a written authorization executed in advance by a fiduciary of each plan whose assets are involved in the transaction, which plan fiduciary is independent of the person engaging in the covered transaction.

(c) The authorization referred to in paragraph (b) of this section is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized person of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (b) of this section with instructions on the use of the form must be supplied to the authorizing fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized person of written notice from the authorizing fiduciary or other plan official having authority to terminate the authorization; and

(2) Failure to return the form will result in the continued authorization of the authorized person to engage in the covered transactions on behalf of the plan.

(d) Within three months before an authorization is made, the authorizing fiduciary is furnished with any reasonably available information that the person seeking authorization reasonably believes to be necessary for the authorizing fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, the form for termination of authorization described in section III(c), a description of the person's brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests.

(e) The person engaging in a covered transaction furnishes the authorizing fiduciary with either:

(1) a confirmation slip for each securities transaction underlying a covered transaction within ten business days of the securities transaction containing the information described in Rule 10b–10(a)(1–7) under the Securities Exchange Act of 1934, 17 CFR 240.10b–10; or

(2) at least once every three months and not later than 45 days following the period to which it relates, a report disclosing:

(A) A compilation of the information that would be provided to the plan pursuant to subparagraph (e)(1) of this section during the three-month period covered by the report;

(B) the total of all securities transaction related charges incurred by the plan during such period in connection with such covered transactions; and

(C) the amount of the securities transaction-related charges retained by such person and the amount of such charges paid to other persons for execution or other services.

For purposes of this paragraph (e), the words "incurred by the plan" shall be construed to mean "incurred by the pooled fund" when such person engages in covered transactions on behalf of a pooled fund in which the plan participates.

(f) The authorizing fiduciary is furnished with a summary of the information required under paragraph (e)(1) of this section at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following:

(1) The total of all securities transaction-related charges incurred by the plan during the period in connection with covered securities transactions.

(2) The amount of the securities transaction-related charges retained by the authorized person and the amount of these charges paid to other persons for execution or other services.

(3) A description of the person's brokerage placement practices, if such practices have materially changed during the period covered by the summary.

(4)(i) A portfolio turnover ratio, calculated in a manner which is reasonably designed to provide the authorizing fiduciary with the information needed to assist in discharging its duty of prudence. The requirements of this paragraph (f)(4)(i) will be met if the "annualized portfolio turnover ratio", calculated in the manner described in paragraph (f)(4)(ii), is contained in the summary.

(ii) The "annualized portfolio turnover ratio" shall be calculated as a percentage of the plan assets consisting of securities or cash over which the authorized person had discretionary investment authority, or with respect to which such person rendered, or had any responsibility to render, investment advice (the "portfolio") at any time or times ("management period(s)") during the period covered by the report. First, the "portfolio turnover ratio" (not annualized) is obtained by dividing (A) the lesser of the aggregate dollar amounts of purchases or sales of portfolio securities during the management period(s) by (B) the monthly average of the market value of the portfolio securities during all management period(s). Such monthly average is calculated by totaling the

market values of the portfolio securities as of the beginning and end of each management period and as of the end of each month that ends within such period(s), and dividing the sum by the number of valuation dates so used. For purposes of this calculation, all debt securities whose maturities at the time of acquisition were one year or less are excluded from both the numerator and the denominator.

The "annualized portfolio turnover ratio" is then derived by multiplying the "portfolio turnover ratio" by an annualizing factor. The annualizing factor is obtained by dividing (C) the number twelve by (D) the aggregate duration of the management period(s) expressed in months (and fractions thereof).

Examples of the use of this formula are provided in section V of this exemption.

(iii) The information described in this paragraph (f)(4) is not required to be furnished in any case where the authorized person has not exercised discretionary authority over trading in the plan's account during the period covered by the report.

For purposes of this paragraph (f), the words "incurred by the plan" shall be construed to mean "incurred by the pooled fund" when such person engages in covered transactions on behalf of a pooled fund in which the plan participates.

(g) If an agency cross transaction to which section IV(b) does not apply is involved, the following conditions must also be satisfied:

(1) The information required under section III(d) or IV(d)(1)(B) of this exemption includes a statement to the effect that with respect to agency cross transactions the person effecting or executing the transactions will have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transactions;

(2) The summary required under section III(f) of this exemption includes a statement identifying the total number of agency cross transactions during the period covered by the summary and the total amount of all commissions or other remuneration received or to be received from all sources by the person engaging in the transactions in connection with those transactions during the period;

(3) The person effecting or executing the agency cross transaction has the discretionary authority to act on behalf of, and/or provide investment advice to, either (A) one or more sellers or (B) one or more buyers with respect to the transaction, but not both.

(4) The agency cross transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available; and

(5) The agency cross transaction is executed or effected at a price that is at or between the independent bid and independent ask prices for the security prevailing at the time of the transaction.

Section IV: Exceptions From Conditions

(a) *Certain plans not covering employees.* Section III of this exemption does not apply to covered transactions to the extent they are engaged in on behalf of individual retirement accounts meeting the conditions of 29 CFR 2510.3–2(d), or plans, other than training programs, that cover no employees within the meaning of 29 CFR 2510.3–3.

(b) *Certain agency cross transactions.* Section III of this exemption does not apply in the case of an agency cross transaction, provided that the person effecting or executing the transaction:

(1) Does not render investment advice to any plan for a fee within the meaning of section 3(21)(A)(ii) of ERISA with respect to the transaction;

(2) is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction, see 29 CFR 2510.3–21(d); and

(3) does not have the authority to engage, retain or discharge any person who is or is proposed to be a fiduciary regarding any such plan assets.

(c) *Recapture of profits.* Section III(a) of this exemption does not apply in any case where the person engaging in a covered transaction returns or credits to the plan all profits earned by that person in connection with the securities transactions associated with the covered transaction.

(d) *Special rules for pooled funds.* In the case of a person engaging in a covered transaction on behalf of an account or fund for the collective investment of the assets of more than one plan (pooled fund):

(1) Sections III (b), (c) and (d) of this exemption do not apply if—

(A) The arrangement under which the covered transaction is performed is subject to the prior and continuing authorization, in the manner described in this paragraph (d)(1), of a plan fiduciary with respect to each plan whose assets are invested in the pooled fund who is independent of the person. The requirement that the authorizing fiduciary be independent of the person shall not apply in the case of a plan covering only employees of the person, if the requirements of section IV(d)(2)(A) and (B) are met.

(B) The authorizing fiduciary is furnished with any reasonably available information that the person engaging or proposing to engage in the covered transactions reasonably believes to be necessary to determine whether the authorization should be given or continued, not less than 30 days prior to implementation of the arrangement or material change thereto, including (but not limited to) a description of the person's brokerage placement practices, and, where requested, any reasonably available information regarding the matter upon the reasonable request of the authorizing fiduciary at any time.

(C) In the event an authorizing fiduciary submits a notice in writing to the person engaging in or proposing to engage in the covered transaction objecting to the implementation of, material change in, or continuation of, the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the pooled fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the nonwithdrawing plans. In the case of a plan that elects to withdraw under this subparagraph (d)(1)(C), the withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw.

(D) In the case of a plan whose assets are proposed to be invested in the pooled fund subsequent to the implementation of the arrangement and that has not authorized the arrangement in the manner described in subparagraphs (d)(1) (B) and (C) of this section, the plan's investment in the pooled fund is subject to the prior written authorization of an authorizing fiduciary who satisfies the requirements of subparagraph (d)(1)(A).

(2) Section III(a) of this exemption, to the extent that it prohibits the person from being the employer of employees covered by a plan investing in a pool managed by the person does not apply if—

(A) The person is an "investment manager" as defined in section 3(38) of ERISA, and

(B) Either (i) the person returns or credits to the pooled fund all profits earned by the person in connection with all covered transactions engaged in by the person on behalf of the fund, or (ii) the pooled fund satisfies the requirements of paragraph IV(d)(3).

(3) A pooled fund satisfies the requirements of this paragraph for a fiscal year of the fund if—

(A) On the first day of such fiscal year, and immediately following each acquisition of an interest in the pooled fund during the fiscal year by any plan covering employees of the person, the aggregate fair market value of the interests in such fund of all plans covering employees of the person does not exceed twenty percent of the fair market value of the total assets of the fund; and

(B) The aggregate brokerage commissions received by the person, in connection with covered transactions engaged in by the person on behalf of all pooled funds in which a plan covering employees of the person participates, do not exceed five percent of the total brokerage commissions received by the person from all sources in such fiscal year.

Section V: Examples Illustrating the Use of the Annualized Portfolio Turnover Ratio Described in Section III (f)(4)(ii)

(a) A, an investment manager affiliated with a brokerdealer that A uses to effect securities transactions for the accounts that it manages, exercises investment discretion over the account of plan P for the period January 1, 1987, through June 30, 1987, after which the relationship between A and P ceases. The market values of P's account with A at the relevant times (excluding debt securities having a maturity of one year or less at the time of acquisition) are:

Date	Market value ($ millions)
January 1, 1987	10.4
January 31, 1987	10.2
February 28, 1987	9.9
March 31, 1987	10.0
April 30, 1987	10.6
May 31, 1987	11.5
June 30, 1987	12.0
Sum of market values	74.6

Aggregate purchases during the 6-month period were $850,000; aggregate sales were $1,000,000, excluding in each case debt securities having a maturity of one year or less at the time of acquisition.

For purposes of section III (f)(4) of this exemption, A computes the annualized portfolio turnover as follows:

A=$850,000 (lesser of purchases or sales)
B=$10,657,143 ($74.6 million divided by 7, *i.e.*, the number of valuation dates)

$$\text{Annualizing factor} = \frac{C}{D} = 12/6 = 2$$

Annualized portfolio turnover ratio=2×(850,000/10,657,143)=0.160=16.0 percent

(b) Same facts as (a), except that A manages the portfolio through July 15, 1987 and, in addition, resumes management of the portfolio on November 10, 1987 through the end of the year. The additional relevant valuation dates and portfolio values are:

Dates	Market value ($ millions)
July 15, 1987	12.2
November 10, 1987	9.4
November 30, 1987	9.6
December 31, 1987	9.8
Sum of Market Values	41.0

During the periods July 1, 1987 through July 15, 1987, and November 10, 1987 through December 31, 1987, there were an additional $650,000 of purchases and $400,000 of sales. Thus, total purchases were $1,500,000 (*i.e.*, $850,000+$650,000) and total sales were $1,400,000 (*i.e.*, $1,000,000+$400,000) for the management periods.

A now computes the annualized portfolio turnover as follows:

A=$1,400,000 (lesser of aggregate purchases or sales)
B=$10,509,091 ($115.6 million divided by 11)

$$\text{Annualizing factor} = \frac{C}{D} = 12/(6.5+1.67) = 1.47$$

annualized portfolio turnover ratio=1.47×(1,400,000/10,509,091)=0.196=19.6 percent.

Section VI. Effective Dates and Transitional Rule

(a) This exemption will be effective on the later of December 18, 1986, or the date on which the Office of Management and Budget approves the information collection requests contained in this exemption under the Paperwork Reduction Act of 1980.

(b) PTE 79-1 and PTE 84-46 are revoked effective April 1, 1987.

Signed at Washington, DC, this 5th day of November, 1986.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 86-25951 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-6160 et al.]

Proposed Exemptions: A.G. Edwards, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to

comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 498(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERIS Procedure 71–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

A.G. Edwards, Inc. Retirement and Profit Sharing Plan (the Plan) Located in St. Louis, Missouri

[Application No. D–6160]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the proposed purchase or sale of zero-coupon obligations based on Treasury securities (STRIPs)[1] between individually directed accounts in the Plan and A.G. Edwards & Sons, Inc. (Edwards), the Plan Administrator, provided the following conditions are met: (A) The purchase or sale of the STRIPs will be on terms at least as favorable as those offered in the ordinary course of business to unrelated customers of Edwards; (B) Purchases or sales will be made only upon the written direction of a Plan participant; and (C) Purchases or sales directed by a participant will be only for the participant's individual account.

Summary of Facts and Representations

1. The Plan is a profit sharing plan covering the employees of A.G. Edwards, Inc. (AGE), its 12 subsidiaries and 3 affiliated companies. As of May, 1985, there were approximately 3,700 participants in the Plan. Edwards, the Plan Administrator, is the principal subsidiary of AGE, the Plan sponsor. Capital Guardian Trust Company (Capital) is the trustee of the Plan. For purposes of investments in STRIPs, one or more persons, who may be officers of Edwards, or an unrelated trust company, will be the trustees of the Plan (the Special Trustees).

2. The Plan currently allows each participant to direct the investment and reinvestment of assets credited to his/her individual account in one or a combination of six different mutual funds in the American Funds Group, which is not an affiliate of AGE. A participant may redirect investment of funds currently in the account no more than twice in any Plan year by giving written notice to Edwards on or before the fifteenth day of the month preceding the date upon which such change is to be made effective. Assets for which there is no effective participant direction are invested in the American Fund Group's money market fund. Once given, an investment direction is deemed to be continuing until explicitly changed in writing by the participant.

3. Edwards proposes to amend the Plan to allow fully vested participants the additional option of investing in STRIPs. STRIPs represent direct ownership of future principal and interest payments on United States Treasury Bonds or Notes. STRIPs pay no semi-annual interest, sell at a substantial discount and pay the full face value upon maturitiy. The total return is fixed at the time of purchase and equals the difference between the price an investor pays and the face value at maturity. The applicant represents that investment in STRIPs is particularly atractive to participants who wish to lock in a fixed rate of interest for a given period of time.

4. The applicant represents that STRIPs are marketed in the following manner. A primary government bond dealer purchases Treasury Securities directly from the United States Government. The primary dealers then break the Treasury Securities into principal and interest component obligations of the underlying securities, which are traded separately.[2] Broker-dealers, such as Edwards, purchase components by a transfer in book-entry form to the bank of the purchaser. At all times regardless of who owns the STRIP, it is maintained as a book-entry account at a bank which participates in the book-entry system operated by Federal Reserve Banks. The particular Government security or securities that represent the obligation to pay the owner of the STRIP will be identified by the unique CUSIP number attached to the obligation. The payment is fully backed by and is a direct obligation of the United States Government. Whether the payment is an interest payment or a principal payment may be determined from the CUSIP number which is attached to that payment.

5. In marketing STRIPs, Edwards acts as a principal rather than an agent. STRIPs are offered to the public in face amounts of $1,000 and integral multiples thereof at discounts from their face amount. Edwards sells STRIPs to its regular customers in the ordinary course of its business at a selling price which is $1.00 to $10.00 per $1,000 of face value above the price established and posted by Edwards for each particular STRIP on the trade date. This mark-up will not be charged to Plan participants for the subject transactions.

6. Edwards represents that it establishes the selling price for STRIPs by examining the bid and asked prices for maturity dates of STRIPs established by three different types of dealers: (1) A primary reporting government bond dealer, such as Salomon Brothers or Merrill Lynch; (2) A non-reporting government bond dealer, such as Tucker-Anthony; and (3) A broker which buys and sells securities only to other broker dealers, such as Mabon-Nugent or Cantor-Fitzgerald. During the course of a business day, Edwards receives quotations from five or more different dealers in the categories described above regarding their bid and asked prices for given maturity dates. These prices are based on the round lot market (sales for a given maturity date of STRIPs in the face amount of $1,000,000 and multiples thereof). Edwards in turn prices the STRIPs to its customers based on the round lot market rather than the odd lot market, resulting in a higher yield-to-maturity for the customers. In some cases the maturity dates of STRIPs held by Edwards may not correspond to the maturity dates for which Edwards

[1] The STRIPs program was announced by the Department of the Treasury on February 15, 1985, to facilitate separate trading of registered interest and principal securities.

[2] For example, if an investor wishes to purchase a STRIP which will pay $25,000 on June 15, 1996, the underlying Treasury obligations may be twenty-five $1,000 interest payments due on that date, or five $5,000 interest payments due on that date, or a $25,000 principal payment due on that date, or another combination of interest and principal payments due on that date totaling $25,000.

received price quotations. In such cases Edwards prices the STRIPs to produce comparable yields within the matrix of price quotes received by Edwards. The applicant represents that Edwards is not the only broker-dealer selling STRIPs and therefore, the prices it establishes must be competitive with the marketplace. Edwards establishes its price at least twice daily, at 8:30 a.m. and at 3:30 p.m. On a day when the market is particularly volatile, Edwards changes its price more frequently. The posted price applies to all sales to all customers.

7. The applicant seeks an exemption to allow any fully vested Plan participant to direct the Special Trustees to invest all or a portion of the balance in the noncontributory portion of his or her individually directed account in STRIPs currently available to Edwards' regular customers in the normal course of business. The only commitment of Plan funds will be by an individual participant for his individual account. Neither AGE, Edwards, Capital nor the Special Trustees will recommend the purchase of STRIPs, nor will any employee of Edwards do anything which will serve as a primary basis for investment decisions with respect to any Plan assets by an individual participant. The applicant represents that Capital, the Plan trustee, is unable to handle investments by individual participants in STRIPs, requiring the appointment of the Special Trustees, who may be officers of Edwards, or an unrelated trust company, to act solely in connection with the purchase of STRIPs. If a participant selects a particular STRIP that is not in Edwards' inventory, Edwards will obtain such STRIP, if available, for resale to the participant.

8. Edwards will sell STRIPs to participants at the lesser of the morning posted price established by Edwards on the date the STRIP is purchased or the price established on that day by a primary government bond dealer who reports to the Federal Reserve Bank, as designated by the Special Trustees. Edwards will not charge Plan participants any of the normal mark-up or commission that it would charge to regular customers in the ordinary course of its business. The applicant represents that it is highly improbable on a given day that any one primary government bond dealer will set the best market price for all matrurity dates and therefore, there is no one primary government bond dealer which Edwards may identify in advance of the trade date as the primary government bond dealer with whom Edwards will peg its selling prices. The applicant further represents that the use of a reference dealer is designed to insure that on any given day, the price established by Edwards in the normal course of its business is in line with the general market forces in effect on that day.

9. A participant may direct the purchase of STRIPs during the minimum of two fixed periods each calendar year, one commencing in mid-April and another commencing in mid-October. In addition, the Special Trustees in their sole discretion may designate up to two additional investment periods each calendar year, one commencing in mid-January and another commencing in mid-July. The investment periods were selected to coincide with each participant's receipt of the regular quarterly benefit statement reporting the status of his-her account under the Plan. As soon as practicable after distribution of the quarterly benefit report, Edwards will notify the participants of the STRIP investment period. The notice (the Notice) shall specify the latest date for delivering investment directions, the date on which investment directions are to be executed and the settlement date.

10. A participant's investment direction must be in writing in a form acceptable to Edwards and must specify the particular STRIP(s), including maturity date(s), to be acquired, the quantity of each STRIP to be acquired and the security or securities to be sold from the participant's other investments to fund the purchase of the STRIP(s). A participant may place a conditional order directing the purchase of a STRIP only if it could be obtained at below a maximum price or above a minimum yield. A participant will be able to rescind any order prior to the trade date specified in the Notice by notifying Edwards. A participant may modify an order should there be insufficient funds to pay for the STRIPs as of the trade date specified in the Notice. The minumum investment in STRIPs shall be $1,000.

11. Edwards will execute the orders on a first come, first serve basis, in the same manner as Edwards processes its orders for its regular customers in the normal course of business. The actual purchase will be made on the date specified in the Notice or as soon as practicable thereafter.

12. The applicant represents that the proposed exemption is in the Plan's best interest because: (a) The proposal merely makes available an additional investment option; (b) the participant may purchase only for his/her individual account; (c) the purchase price will be set by external market conditions and by an independent third party, neither of which are within the control of Edwards of AGE, and (d) the purchase price paid by the participant for a particilar STRIP will be below the normal market price available to a regular customer of Edwards, because no mark-up or commission will be paid.

13. The applicant also requests an exemption to permit Plan participants to have the opportunity once a year to sell any or all of the STIPSs in their account. If the STRIP is sold through Edwards in a principal transaction, the sale price for the STRIP will be the sale price that would be available for the same STRIP sold by Edwards in the ordinary course of business to its regular customers on the date of sale. Plan participants will not be charged any mark-up from the base sale price. The trade will otherwise be executed in the same manner as a sale in the ordinary course of business by a regular customer of Edwards. Any decision to sell a STRIP prior to distribution from the Plan will be voluntarily made by a participant. In making the sale option available, neither Edwards, AGE, the Special Trustees nor Capital will recommend that any participant sell any STRIP.

14. In summary, the applicant represents that the proposed transactions meet the criteria of section 408(a) of the Act because: (a) The purchase and sale of the STRIPs will be on terms at least as favorable as those offered in the ordinary course of business to unrelated customers of Edwards; (b) no commissions or mark-ups will be charged to Plan participants on either the purchase or the sale of the STRIPs; (c) purchases and sales will be made only on the written direction of a Plan participant; and (d) purchases and sales of the STRIPs directed by a participant will only be for that participant's individual account.

For further Information Contact: Mr. Gary H. Lewfkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The general Motors Retirement Plan and Trust for Salaried Employees (the Salaried Plan); the General Motors Hourly-Rate Employeers Pension Plan and Trust (the Hourly Plan); and the General Motors Frigidaire Special Pension Plan and Trust (the Frigidaire Plan; Collectively, the GM Trusts) Located in New York, New York

[Application Nos. D-6540, D-6541, and D-6542]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act

and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to: (1) A loan (the Loan) on September 18, 1985 of $625 million by the GM Trusts to the Taubman Realty Group Limited Partnership (TRG), a party in interest with respect to the GM Trusts; (2) the purchase on September 18, 1985 of an option (the Option) to acquire a 50 percent limited partnership interest in TRG by the GM Trusts for $50 million; (30 the possible exercise of the Option by the GM Trusts and the payment of the exercise price of the Option in exchange for a limited partnership interest in TRG; (4) the transfer, sale or exchange of the GM Trusts' interests in the Loan or the rights in the Option to an institutional investor which is a party in interest with respect to assets of the GM Trusts unrelated to the subject transaction; (5) the term loans to the partners in TRG (the Term Loans) from the GM Trusts if, at any time after the exercise of the Option, TRG is terminated or there is a redemption of the GM Trusts' interests in TRG; (6) the exercise of the buy/sell option pursuant to the terms of the Prutaub Joint Venture (Prutaub) agreement (the Joint Venture Agreement) and the transfer of interests between TRG, or the GM Trusts as successor to TRG, and the Prudential Insurance Company of America (Prudential), a party in interest with respect to the Salaried Plan, pursuant to the Joint Venture Agreement; and (7) the exchange and transfer of interests between the GM Trusts and TRG if, at any time after the exercise of the Option, TRG is terminated or there is a redemption of the GM Trusts' interests in TRG; provided that the terms of all transactions are no less favorable to the GM Trusts than the terms available in similar transactions with unrelated parties.

Effective Date: If the proposed exemption is granted, the exemption will be effective September 18, 1985.

Summary of Facts and Representations

1. The Salaried Plan, the Hourly Plan, and the Frigidaire Plan are qualified defined benefit pension plans established by the General Motors Corporation (GM) to provide retirement benefits for employees of GM and its affiliates. The total number of participatns for the Salaried Plan, the Hourly Plan and the Frigidaire Plan were 215,973, 658,757, and 2,166, respectively, as of September 30, 1984. The total assets of the GM Trusts equalled approximately $23.3 billion as of September 30, 1985. The assets of the plans are held in two trusts. One trust holds the assets of the Salaried Plan, while a second master trust holds the assets of the Hourly Plan and the Frigidaire Plan. Bankers Trust Company of New York City (Bankers Trust) is the trustee of each of the GM Trusts. Bankers Trust has no discretionary authority over the investment management of the assets held in the GM Trusts relating to the subject transactions.

2. On September 18, 1985, the GM Trusts entered into the loan to TRG of $625 million and the purchase of the Option to acquire, after December 31, 1997 and on or before January 15, 2006, a 50 percent limited partnership interest in TRG. The interests in the Loan and the Option were allocated equally between each GM Trust. Immediately after the closing of the Loan and Option transaction, each GM Trust sold an equal portion of the Loan and the Option to the At&T Master Pension Trust (the AT&T Trust), allowing the AT&T Trust to acquire a 8.2 percent particiaption interest in the Loan and the Option. The participation of the GM Trusts and the AT&T Trust (the Trusts) in the investment is governed by a participation agreement (the Participation Agreement), entered into on August 1, 1985 [3] Pursuant to the terms of the Participation Agreement, the GM Trusts may sell or transfer any of their interests in the Loan or rights in the Option, provided that the acquiring entity is a "qualifying institutional investor" (as discussed below). The AT&T Trust may sell or transfer any of its interests in the investments under the same conditions as the GM Trusts, except that the AT&T Trust must either obtain prior approval from the GM Trusts of the identity of the acquiring entity or consult with the GM Trusts prior to the transaction and obtain the agreement of the acquiring entity to be bound by the provisions of the Participation Agreement. The GM Trusts have the right to cause the sale of the entire Loan and Option to a third party, subject to a right of first refusal held by the AT&T Trust. The AT&T Trust may elect to purchase the GM Trusts' interests in the Loan or the Option at a price equal to the offered price.

3. The Finance Committee of the GM Board of Directors, as the named fiduciary of the three plans participating in the GM Trusts, has delegated certain responsibilities to the GM Pension Investment Committee (the Committee). The Committee is responsible for the hiring, review and removal of investment managers of assets of the GM Trusts. Prior to the subject transactions, the Committee retained Aldrich, Eastman, and Waltch, Inc. (AEWI) as an investment manager for approximately $250 million of the GM Trusts' assets. AEWI is a real estate investment management company located in Boston, Massachusetts, and is a registered investment advisor under the Investment Advisers Act of 1940. At the present time, AEWI manages approximately $818 million of the assets of the GM Trusts. AEWI is generally able to satisfy the requirements for being considered a qualified professional asset manager (QPAM) under Prohibited Transaction Exemption (PTE) 84–14, however, PTE 84–14 is not available to AEWI in this case because the assets of the GM Trusts managed by AEWI exceed 20 percent of the total client assets under management by AEWI for all clients.[4]

4. In 1984, Salomon Brothers, Inc. (Salomon Brothers) developed an investment proposal relating to certain property investments held by A. Alfred Taubman, members of his family, certain past and present employees of the Taubman Company, Inc., and certain entities controlled by one or more such individuals (the Taubman Group). Salomon Brothers presented the proposal to a number of prospective investors and investment managers, including AEWI. After reviewing the material furnished by Salomon Brothers, AEWI developed an alternative propsosal involving these property investments which culminated in the Loan and the Option.

AEWI presented the Loan and the Option investment proposal to the Committee and to other clients of AEWI, including the AT&T Trust. Based upon AEWI's presentations to the Trusts, the Trusts' representatives expressed an interest in participating in the investments. The GM Trusts' representatives expressed an interest in taking up the entire amount of the proposed investments, while representatives of the AT&T Trust expressed an interest in a smaller

[3] The applicant represents that to the extent the AT&T Trust's participation in the Loan and the Option, or other related transactions, gives rise to prohibited transactions, such transactions are exempt under Prohibited Transaction Exemption (PTE) 84–142, (49 FR 38381), September 28, 1984).

[4] See PTE 84–14, section I(e), (49 FR 9494, March 13, 1984).

portion of the proposed investments. After considering the proposals, the Committee and the Senior Vice President-Finance of AT&T, Virgini A. Dwyer (Ms. Dwyer), authorized AEWI to negotiate the terms and conditions of the Loan and the Option with TRG. Both the Committee, on behalf of the GM Trusts, and Ms. Dwyer, on behalf of the AT&T Trust, retained residual authority to approve or disapprove the investment.[5]

With respect to the GM Trusts, AEWI was given full authority as investment manager to analyze the Loan and the Option, to evaluate the suitability of the investments under the broad objectives for real estate investments established by the Committee. None of the individuals comprising the Committee, all of whom are officers of GM, is affiliated in any way with AEWI, TRG, or persons or entities associated with TRG, nor with the parties in interest to the GM Trusts whose other activities give rise to the party in interest relationships of TRG and certain of its partners. In addition, AEWI and its officers, directors and principals have no other relationships with the GM Trusts or GM and its affiliates.

5. The applicant represent that TRG was established in March, 1985 as a general partnership under Michigan law, and was converted, effective August 1, 1985, into a limited partnership under the laws of the Commonwealth of Massachusetts. Immediately prior to the making of the Loan and issuance of the Option, members of the Taubman Group contributed all of there respective interests in certain property investments to TRG in return for partnership interests in TRG. In particular, the applicant states that A. Alfred Taubman holds, directly and indirectly, approximately a 69 percent interest in TRG, Richard P. Kughn holds approximately a 14.5 percent partnership interest in TRG, and William S. Taubman holds approximately a 2.2 percent partnership interest in TRG. A. Alfred Taubman is the managing general partner of TRG.

The property investments held by TRG are partnership interests in operating partnerships which own, or hold long-term leasehold interests in, seventeen regional shopping centers (the Operating Partnerships). Three of the Operating Partnerships are owned entirely by TRG. One of the Operating Partnerships, Prutaub, is 50% owned by TRG with the remaining 50 percent interest owned by Prudential in its general account. Prudential is an investment manager for assets of the Salaried Plan held in various separate accounts maintained by Prudential. Prudential is also an investment manager for assets of the AT&T Trust held in various separate accounts maintained by Prudential. In addition, Prudential's wholly-owned subsidiary, Prudential Bache Securities, Inc., is a brokerage service provider for the GM Trusts. Since Prudential holds a 50 percent interest in Prutaub, Prutaub is a party in interest with respect to the Salaried Plan. Thus, TRG is a party in interest with respect to the Salaried Plan as a more than 10 percent owner of Prutaub. A. Alfred Taubman holds approximately a 69 percent interest in TRG and, therefore, is a party in interest with respect to the Salaried Plan as a more than 10 percent indirect owner of Prutaub.

The applicant states that neither Prudential nor any of its affiliates has any discretionary authority over the assets of the GM Trusts involving the Loan and the Option, and that Prudential and its affiliates did not in any way participate in the evaluation, approval, negotiation or closing of the Loan and the Option transaction.

Two other Operating Partnerships, Lakeside/Novi Associates and Woodfield Associates, are 50 percent owned by TRG with the remaining 50 percent owned by Homart Development Company (Homart), a wholly-owned subsidiary of Sears, Roebuck and Company (Sears). Sears is also the parent of Dean Witter Reynolds, Inc. (Dean Witter), which is a brokerage service provider for the GM Trusts. Thus, each Operating Partnership in which Sears, through Homart, holds a 50 percent interest is a party in interest with respect to the GM Trusts. In addition, TRG is a party in interest with respect to the GM Trusts as a more than 10 percent owner of Lakeside/Novi Associates and Woodfield Associates. Since A. Alfred Taubman holds a more than 10 percent indirect interest in Lakeside/Novi Associates and Woodfield Associates through his interest in TRG, he is a party in interest with respect to the GM Trusts.

The applicant states that neither Sears nor Dean Witter has any discretionary authority with respect to the assets of GM Trusts involving the Loan and the Option, and that neither of them participated in any way in the evaluation, approval, negotiation or closing of the Loan and Option transaction.

William S. Taubman, the son of A. Alfred Taubman, holds a partnership interest in TRG. During the time the Loan and Option transaction was closed, William Taubman was employed by Oppenheimer & Company (Oppenheimer), which provides brokerage services to the GM Trusts. Thus, Oppenheimer is a party in interest with respect to the GM Trusts and William Taubman, as an employee of Oppenheimer, was a party in interest with respect to the GM Trusts. The applicant states that William Taubman, in the course of his employment with Oppenheimer, was not directly engaged in providing services to the GM Trusts. The applicant states further that Oppenheimer has no discretionary authority with respect to the assets of the GM Trusts comprising the Loan and the Option, and has not participated in any way in the evaluation, approval, negotiation or closing of the transaction.

The applicant represents that no members of the Taubman Group, who are otherwise parties in interest to the GM Trusts by virtue of a relationship to Prudential, Sears and other service providers with respect to the GM Trusts, exercised any discretionary authority on behalf of the GM Trusts with respect to the making of the Loan and the purchase of the Option or other transactions described herein.

6. AEWI represents that the Loan and the Option are designed to provide the GM Trusts with the opportunity to invest in one of the largest shopping center portfolios in the United States. AEWI expects that the GM Trusts will benefit from the fixed and secured investment return under the Loan for at least twelve years and, through the exercise or sale of the Option, from participation in the equity appreciation in the shopping center portfolio.

The applicant states that the Loan is evidenced by a $625 million note given by TRG to the GM Trusts. TRG received only $560 million with the remaining $65 million principal amount deducated as original issue discount. TRG's proceeds from the Loan and the sale of the Option, together comprising $610 million, were used to fund $600 million in term loans to the partners in TRG (the Term Loans), with the remaining $10 million being held in a special reserve fund for additional security.

Pursuant to the terms of the Loan Agreement, the Loan will nature on January 16, 2006, although full repayment may be made in seven installments ending on January 15, 2010. TRG may prepay the Loan at any time

[5] The applicant states that AEWI would also not be considered a QPAM with respect to the GM Trusts under PTE 84-14 since a QPAM msut be the decision-maker with respect to the assets of a plan involved in a particular transaction. See PTE 84-14, Section I(c).

between December 31, 1997 and December 31, 2004. The Trusts have the option to call the Loan after December 31, 1998, if certain notice requirements to TRG are met. If the Option is exercised while the Loan is outstanding, TRG may accelerate the maturity of the Loan or the Trusts may require the prepayment of the Loan.

The applicant states further that the Loan bears interest at a fixed rate of 12.5 percent per annum on the adjusted principal amount of the Loan. Interest is payable monthly. However, a portion of the monthly interest payment will be deferred and added to the principal. The interest rate may increase to as high as 13.1 percent under certain conditions if TRG extends the time before which the Trusts' right to call the Loan may be exercised. The Loan is secured by security agreements and other documents establishing the Trusts' lien and priority in all the material assets of TRG, including TRG's ownership interests in the Operating Partnerships. TRG's ownership interests in the Operating Partnerships had a fair market value determined by independent appraisal of more than $740 million. The Loan is also secured by the $10 million pledge of the Loan proceeds held in the special reserve fund with the State Street Bank and Trust Company (State Street), as escrow agent, a pledge of the Term Loan notes and security given for those notes, including $120 million from the Term Loans held in escrow with State Street, and the partnership interests of the partners in TRG. The total value of the security for the Loan is approximately 870 million.

Under the Loan agreement and Term Loan agreement between TRG and the individuals who hold interests in TRG, additional security is provided by the assignment to the Trusts of TRG's rights of personal recourse to A. Alfred Taubman and Richard P. Kughn for repayment of the Term Loans. The Trusts may require prepayment of the Loan if the ratio for either Mr. Taubman's or Mr. Kughn's respective assets less liabilities to their respective aggregate obligations on the Term Loans is ever less than 148 percent as of the close of any fiscal year before the release of the personal recourse obligations under the Term Loans. The applicant states that the value of the security for the Loan, including the personal recourse rights, was 2.15 times the principal amount of the Loan as of September 18, 1985, and is not expected to fall below a 1.99 level for the entire term of the Loan.

The applicant represents that there are several covenants and conditions in the Loan Agreement which are intended to protect the GM Trusts' security interests and ensure that TRG will be able to repay the Loan when due. The Loan Agreement limits the amount and type of partnership distributions that may be made by TRG prior to the exercise of the Option, prohibits additional borrowing by TRG and restricts the sale or transfer of properties by TRG or the acquisition of additional properties by TRG, without the prior consent of the Trusts under the Participation Agreement.

7. The Term Loans, the $600 million TRG loaned to the partners of TRG in proportion to their respective interests in TRG, bear interest at a rate of 13.75 percent per annum. In addition to the $10 million in the reserve fund, the applicant states that $120 million of the principal amount of the Term Loans has been placed in an escrow fund with State Street to be held as additional security for the Term Loans until certain cash flow requirements for TRG are met. The Loans are also secured by assignment of the borrowers' partnership interests in TRG. The Term Loans to A. Alfred Taubman and Richard P. Kughn, and certain related persons and entities, which constitute more than 90 percent of the principal amount of the Term Loans, will remain full recourse personal obligations of these borrowers until TRG realizes the cash flow requirements. When the specified cash flow levels are reached, the personal recourse obligations will be removed and the remaining balance of the $120 million escrow fund held by State Street will be released to the Term Loan borrowers.

The principal amount of the Term Loans will be repayable in a single payment, due on January 16, 2006. The applicant states that if a capital distribution by TRG from the proceeds of the sale or other disposition of its interest in an Operating Partnership would cause the ratio of the value of TRG's remaining interests in the Operating Partnerships to the aggregate outstanding principal of the Term Loans to fall below 1.33, such capital distribution must be applied to prepay the Term Loans to the extent necessary to maintain the ratio at 1.33. If TRG is terminated or the Trusts' partnership interests in TRG are redeemed, participation interests in the Term Loans will be distributed to the partners in TRG in proportion to their respective ownership interests. Thereafter, the Term Loans will become due and payable in four equal semi-annual installments. If the Trusts initiate the termination or redemption, the payments will commence on the later of (a) six months after the termination or redemption or (b) December 31, 1998, or as extended by the Loan agreement. Payments will be allocated first to the portion of the Term Loan distribution to the Trusts until that portion is paid in full.

8. The applicant represents that the Option was purchased at a price, $50 million, which was determined based on arm's-length negotiations between the Taubman Group and AEWI. The Option price was approved by the Committee on behalf of the GM Trusts and by Ms. Dwyer on behalf of the AT&T Trust. The Option may be exercised on any payment date of the Loan after December 31, 1997 through January 16, 2006, or earlier in the event of default on the Loan. The Option must be exercised as a whole and not in parts. The determination to exercise the Option would be made by the Trusts under the Participation Agreement.

9. The Trusts have the right to transfer their interests in the Loan or rights in the Option to "qualifying institutional investors." The applicant states that "qualifying institutional investors" include various types of retirement plans, endowment funds and private foundations having more than $50 million of assets, pooled funds having more than $100 million of assets in which plans or other tax-exempt entities invest, insurance companies and banks having more than $2 billion of assets, and any entity or fund substantially all of the beneficial interests in which are owned by one or more of the above. Certain of these institutional investors, such as insurance companies and banks or their affiliates, may be parties in interest with respect to the GM Trusts by reason of providing investment management or other financial services to the GM Trusts.

The applicant states that the decision to sell or transfer an interest in the Loan or the Option will be made by the Committee on behalf of the GM Trusts and Ms. Dwyer on behalf of the AT&T Trust. Thus, the purchaser of the interest in the Loan or the Option which may be a party in interest with respect to the GM Trusts would not have or exercise any discretionary authority, responsibility or control on behalf of either of the Trusts in the transaction. In addition, the terms of any such transfer would be negotiated by AEWI, or another independent advisor, on behalf of the Trusts. The applicant states that AEWI will not represent or exercise any discretionary authority, responsibility or control on behalf of any party other than

the Trusts with respect to the sale of an interest in the Loan or the Option.

The applicant also represents that the Participation Agreement provides for the sale from the GM Trusts to the AT&T Trust of additional portions of the Loan and the Option. Under the Participation Agreement, AEWI was appointed to act as agent on behalf of the Trusts. However, AEWI did not represent any of the Trusts in connection with the negotiations which resulted in the establishment of the rights and obligations of the Trusts to one another under the Participation Agreement. Pursuant to the terms of the Participation Agreement, all important actions relating to the Trusts' rights or security under, or the disposition of, the Loan or the Option is subject to majority in interest approval of the participants in the Participation Agreement (i.e. the GM Trusts and the AT&T Trust). In addition, the decision of either of the Trusts to sell its respective interest in the Loan or the Option, or to sell participation interests therein, will be made by the appropriate plan fiduciaries of the Trusts and not by AEWI. In connection with the making of such decisions, AEWI would, at a minimum, continue to provide each of the Trusts with financial information and other relevant data that the plan fiduciaries need to make an informed judgment about the proposed action. Thus, AEWI will not be acting on behalf of or representing the interests of either of the Trusts in its dealings with the other Trust in such a sale. However, the application states that once decisions have been made in accordance with the terms of the Participation Agreement, AEWI may represent the Trusts in dealings with third parties in order to carry out such decisions.

10. The exercise price for the Option will equal $623.5 million, with adjustments for the net amount of deferred interest under the Loan and the aggregate amount of capital distributions made by TRG. AEWI states that the Option represents a valuable right to acquire a 50 percent interest in TRG at a price substantially below the predicted fair market value of the interests in TRG during the Option exercise period.

Upon the exercise of the Option, the Trusts will effectively hold a 50 percent limited partnership interest in TRG under the terms of the Participation Agreement of their interests in TRG. The applicant states that the termination or redemption may not take place before January 15, 1998. Upon termination of TRG or redemption of the Trusts' interests in TRG, the property interests held by TRG will be allocated to one of two lists prepared by TRG, each of which will hold assets with equal aggregate appraised net value as of the end of the most recent fiscal year. The Trusts will select one list of properties and all of the properties on the list will be distributed to the Trusts as tenants in common. However, the applicant states further that if the proposed distribution would impair the value of any property because of the rights of third parties, and such rights are not waived or are exercised, an adjustment will be made by agreement of the parties to have the impairment in value borne as equitably as possible among all of the partners in TRG.

The applicant represents that the Trusts or the Taubman Group partners may elect not to distribute the properties upon dissolution or redemption, but may instead elect to have TRG liquidate all its properties. Under this option, both the Trusts and the Taubman Group partners will be authorized to sell for cash the list of properties which were to have been distributed to them. If the liquidation of either list of properties is not completed within three years, the Trusts will be authorized to sell any remaining properties which were to have been sold by the Taubman Group partners and vice versa. The applicant states that the exchange of responsibilities wil be repeated at three year intervals until all the properties have been sold. The proceeds of all sales will be divided among all the partners in accordance with their respective interests in TRG. In addition, upon termination or redemption, the applicable portion of each Term Loan will be distributed to the partners in TRG, with a 50 percent interest distributed to the Trusts. The Term Loans will become due and payable in four equal semi-annual installments.

11. Prutaub, as discussed above, is an Operating Partnership in which TRG holds 50 percent interest. Prutaub holds a long-term lease on a shopping mall in Short Hills, New Jersey. Prudential holds the remaining 50 percent interest in Prutaub and is the lessor under the lease. The applicant represents that Prudential and the Trusts may become co-joint venturers in Prutaub through the Trusts' foreclosure on the pledge of TRG's interest in Prutaub in the event of a default on the Loan. Further, Prudential and the Trusts may become co-joint venturers if, following the exercise of the Option by the Trusts, TRG is terminated or the Trusts' limited partnership interests are redeemed, and TRG's interest in Prutaub is distributed to the Trusts.

If the Trusts receive TRG's interest in Prutaub, Prudential or the Trusts may exercise a buy/sell option under the Joint Venture Agreement. Under the buy/sell option, after September 1, 1990, a joint venturer may elect to terminate Prutaub and offer to purchase the entire equity interest of the other joint venturer in Prutaub. In addition, each joint venturer has a right of first refusal if the co-venturer wishes to sell its interests to a third party. In the event that the Trusts succeed to TRG's interest in Prutaub, the applicant states that the exercise of the buy/sell option or the first refusal rights between Prudential and the Trusts may constitute prohibited transactions. However, the applicant states further that neither TRG, and certain persons associated with TRG, nor Prudential has exercised or possessed any discretionary authority with respect to the assets of the GM Trusts involved in the transactions described herein.

12. The applicant represents that the Loan and the Option permit the GM Trusts to make real estate investments that further the investment objectives of the GM Trusts. In connection with the making of the Loan and the Term Loans, the purchase of the Option, the exercise of the Option and the transfer of interests upon the termination of, or redemption of interests in, TRG, the applicant states that neither TRG nor any persons associated with TRG have exercised or possess any discretionary authority with respect to the assets of the GM Trusts. Further, in connection with the exercise of the buy/sell option under the Joint Venture Agreement, Prudential would not be in a position to exercise any discretionary authority on behalf of the GM Trusts. The applicant states further that any institutional investor involved in the transfer of any interests in the Loan or the Option would not have any discretionary authority on behalf of the GM Trusts in the subject transactions.

The applicant represents that the terms of both the Loan and the Option, as well as the Joint Venture Agreement, were negotiated on a totally arm's-length basis. AEWI, after a thorough analysis, determined that the Loan and the Option were attractive investment opportunities for the GM Trusts and recommended that the Committee approve the investments on behalf of the GM Trusts. The Committee, which is totally independent of TRG and the Taubman Group, Prudential and its subsidiaries, Sears and its subsidiaries, and Oppenheimer, approved the making of the Loan and the purchase of the Option. The Committee will also be required to approve the exercise of the

Option at the price determined under the Option agreement and the initiation of the termination of TRG or the redemption of the GM Trusts' interests in TRG. In addition, AEWI received the Joint Venture Agreement as part of its analysis of the Loan and the Option and, particularly, the amendments to such Agreement creating the buy/sell option shortly before the closing of the transaction on September 18, 1985. These amendments were negotiated on an arm's-length basis between members of the Taubman Group and Prudential in order to permit Prudential to terminate Prutaub before it became a partner of the GM Trusts. The applicant states that any other transactions involving the Loan and the Option, including the transfer of interests in the Loan or rights in the Option, would be entered into only on an arm's-length basis, with AEWI representing the GM Trusts, and any proposed transaction would require Committee approval. Thus, the applicant concludes that no party in interest with respect to the GM Trusts would be in a position to improperly influence the terms of any transaction for which relief is requested because AEWI and the Committee are unaffiliated with these other parties in interest who may be involved in the transaction. [6]

13. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) The subject transactions concern a clearly defined set of related transactions involving the Loan and the Option; (b) the GM Trusts' participation in the Loan and the Option have been determined by AEWI, an independent investment advisor, and by the Committee to be of a quality and potential profitability that meets the investment objectives of the GM Trusts, and, therefore, AEWI and the Committee believe that the subject transactions are in the best interests of the GM Trusts; and (c) the subject transactions were and will be negotiated either by AEWI or another independent advisor pursuant to arm's-length negotiations with the terms of such transactions being subject to the approval of the Committee.

For Further Information Contract: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[6] The applicant also states that because a large number of persons and entitles are service providers and investment managers to the GM Trusts, additional party in interest relationships between the GM Trusts and TRG or members of the Taubman Group may arise during the period of the Loan and the Option. However, the applicant represents that such relationships will not involve parties in interest who act or have the power to act as a fiduciary with respect to assets of the GM Trusts represented by the Loan or the Option.

Barikus & Kronstadt D.O., P.A. Defined Benefit Pension Plan (the Plan) Located in Miami, Florida

[Application No. D-6593]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale by the Plan of certain real property (the Property) to Miriam R. Barkus, a party in interest with respect to the Plan, provided that the sales price is no less than the greater of the fair market value of the Property as of the date of sale or the total expenses to the Plan in connection with the acquisition and holding of the Property.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with approximately six participants and total assets of $710,413, as of May 31, 1985. Barkus & Kronstadt D.O., P.A., (the Employer), a professional association doing business in Miami, Florida, is the Plan Sponsor. The trustees of the Plan are Daniel R. Barkus, D.O., Miriam R. Barkus, his wife, and Richard A. Kronstadt, D.O. Daniel R. Barkus and Richard A. Kronstadt are co-owners of the Plan sponor.

2. On August 30, 1984, the Plan purschased the Property, a parcel of land with a residence located at 34 NW. 169th Street in North Miami Beach, Florida, for a purchase price of $53,000 from an unrelated third party.[7] The purchase price included a cash payment and the assumption of a mortgage (then approximately $32,525.) As of August 21, 1986, the mortgate had an outstanding balance of $31,245.80.

3. The Plan purchased the Property with the intention of reselling it at a profit, together with other property in the area, after the Property had been rezoned. However, application for rezoning was denied, and the Property remains zoned as residential.

4. The applicant represents that, although at the present time the Property is being rented to an unrelated third party for $300 per month, the total cost of maintaining the Property, including the mortgage payment of $398 per month, is $500 per month.

5. According to Bernard Rein, of Rein Realty and Mortgage Company, approximately $12,000 worth of repairs would be required to bring the Property up to the level where the rent could be increased to between $450 and $500 per month.

6. Y. Stephen Liedman, the Plan Administrator, of Independent Pension Services Administrative Company, a pension consulting firm doing business in Coral Gables, Florida, stated on October 4, 1985 that continued ownership of the Property by the Plan was not in the Plan's best interest because the Property is being rented at a loss, substantial capital improvements to the Property are needed, and the investment in the Property is illiquid.

7. On April 19, 1985, Robert W. Codling, A.I.R.E.A., of Alamo Properties, Inc., a real estate firm doing business in Ft. Lauderdale, Florida, stated that the fair market value of the Property as of that date was $48,000.

8. Accordingly, Miriam R. Barkus, wife of a co-owner of the Plan sponsor, trustee of the participants in the Plan, desires to purchase the Property for cash and assume the current mortgage from the Plan, paying to the Plan the greater of the fair market value of the Property as of the date of sale or the total expenses to the Plan to the date of sale in connection with the acquisition and retention of the Property by the Plan, including, but not limited to, the price originally paid for the Property, mortgage payments of interest and principal, property taxes, and maintenance expenses. The Plan will not be required to pay any real estate commissions, fees, or taxes in connection with the sale.

9. In summary, the applicant represents that the proposed transaction will satisfy the terms and conditions of section 408(a) of the Act because: (a) The Property will be sold for the greater of its fair market value at the time of the sale as determined by an independent appraiser or for the total expenses to the Plan in connection with the acquisition and holding of the Property; (b) the sale represents a one-time transaction for cash which can be easily verified; (c) the sale will not require the payments of any commissions, fees, or taxes by the Plan; (d) the Plan will not suffer any loss with respect to its outlay in connection with its purchase and holding of the

[7] In this proposed exemption, the Department expresses no opinion as to whether the acquisition by the Plan of the Property violated any provisions of Part 4 of Title I of the Act.

Property; and (e) the Trustees of the Plan have determined that the proposed transaction would be in the interest and protective of the Plan and of its participants and beneficiaries.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Metalex Manufacturing, Inc. Employee Profit Plan and Trust (the Plan), Located in Cincinnati, Ohio

[Application No. D–6722]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedures 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale for cash by the Plan of certain real property (the Real Property) to Werner K. Kummerle (Mr. Kummerle), a party in interest with respect to the Plan, provided that the amount received is the greater of the fair market value of the Real Property as of the date of sale or the Plan's total outlay for the Real Property to the date of sale, including, but not limited to, the price originally paid by the Plan for the Real Property, property taxes, interest and maintenance expenses.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by Metalex Manufacturing, Inc., (the Plan Sponsor), a manufacturer of machinery in Cincinnati, Ohio. As of May 12, 1986, the Plan had approximately 87 participants. The Plan had assets of $191,569 as of June 30, 1980; of $355,659 as of June 30, 1983; and of $739,418 as of June 30, 1985. Trustees of the Plan are Werner K. Kummerle, 100% owner of the Plan Sponsor, and Sue L. Kummerle, his wife (the Kummerles).

2. On August 13, 1979, the Plan purchased 25.587 acres of land in Liberty Township, Butler County, Ohio from an unrelated third party for $189,313.20 in cash (the 1979 Purchase).[8] On the same date, the Kummerles bought a contiguous 77.549 acre parcel of land (the Kummerle Parcel) from the same unrelated third party by paying $10,000 in cash, assuming a first mortgage with a balance of $130,881.68, and taking a second mortgage in the amount of $138,294.72.

3. On August 13, 1982, the Plan purchased 14.305 acres of the Kummerle Parcel from the Kummerles for $123,576.70 in cash (the 1982 Purchase). The 1979 Purchase and the 1982 Purchase together make up the Real Property. The applicant represents that the 1982 Purchase was for fair market value, though no independent appraisal of the 14.305 acres was made at the time. The applicant acknowledges that the 1982 Purchase was a prohibited transaction under section 406 of the Act and accordingly represents that he has prepared Form 5330 (Return of Initial Excise Tax) with respect to the 1982 Purchase, and will file this return and pay all applicable excise taxes within 60 days from the date of the grant of this exemption.

4. The applicant represents that the Plan purchased the Real Property in the anticipation that it would increase in value. Because the Real Property has declined in value since its purchase by the Plan and has produced only $2,250 in rental income since its purchase, the Kummerles now wish to purchase it from the Plan to prevent the Plan from suffering any loss in connection with its acquisition and holding of the Real Property, and to enable the Plan to invest its funds in more liquid and more profitable investments.

5. On December 30, 1985, A. Seth Johnston, ARA, AFM, an independent appraiser with Agricultural Land Consultants, Inc., rural land appraisers and real estate specialists located in West Chester, Ohio, placed the fair market value of the Real Property at $147,200.

6. The applicant seeks an administrative exemption for the Plan to sell the Real Property to Mr. Kummerle for a cash amount equal to the greater of the fair market value of the Real Property as of the date of sale by the Plan or the Plan's total outlay for the Real Property to the date of sale, including, but not limited to, the price originally paid to purchase the Real Property, property taxes, interest and maintenance expenses. The applicant represents that the proposed transaction will not cause the Plan to exceed the limitations on contributions to the Plan contained in section 415 of the Code.

7. In summary, the applicant represents that the proposed transaction will meet the statutory criteria of section 408(a) of the Act because: (a) The Real Property will be sold for the greater of the fair market value at the time of sale as determined by an independent appraiser or the Plan's total outlay for the Purchase to the date of sale, including, but not limited to, the price originally paid by the Plan for the Real Property, property taxes, interest and maintenance expenses; (b) the proposed sale represents a one-time transaction for cash; (c) the proposed sale will not require the payment of any commissions by the Plan; (d) the proposed sale will enable the Plan to dispose of an asset which produces little income; and (e) the Trustees have determined that the proposed transaction would be in the best interests and protective of the Plan and its participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan's either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Reagent Chemical & Research, Inc. Employee's Profit Sharing Plan and Trust (the Plan) Located in Middlesex, NJ

[Application No. D–6758]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan for $233,836 in cash of a parcel of improved real property located in Raritan Township, Hunterdon County, New Jersey to Brian Sheuse, a party in interest with respect to the Plan; provided that the cash received on the

[8] In this proposed exemption the Department expresses no opinion as to whether the acquisition or holding of the real property acquired in the 1979 Purchase violated any provision of Part 4 of Title I of the Act.

date of sale is no less than the fair market value.

Summary of Facts and Representations

1. The Plan is a defined contribution profit-sharing plan which provides for individual accounts for its approximately 200 participants. As of December 31, 1985, the assets of the Plan totalled $11,044,068. The trustees (the Trustees) for the Plan are Thomas J. Skeuse (Thomas Skeuse) and Robert H. Dallas (Bob Dallas) who are also participants in the Plan.

2. The Plan sponsor is Reagent Chemical & Research, Inc. (the Employer), a subchapter S corporation, located at 124 River Road in Middlesex, N.J. Thomas Skeuse and Bob Dallas own 66⅔ percent and 33⅓ percent interest in the Employer, respectively. Brian Skeuse is an employee of the Employer, a participant in the Plan, and the son of Thomas Skeuse.

3. On November 3, 1980, the Plan acquired at a cost of $225,000 from Joe and Wenona Russo, unrelated third parties with respect to the Plan, a parcel of real property consisting of approximately 34.58 acres of land (the Land) improved by three buildings, a two-story stone and frame single family residence, a barn, and an animal shed (the Buildings; collectively the Land and Buildings will hereinafter be referred to as the Property). The Plan has paid for taxes, insurance, and maintenance on the Property since it was acquired. The Property is 2,500 feet from a tract of land (the Hilltop Property) owned by Hilltop Associates, the partners of which are Thomas Skeuse and Bob Dallas. Also, adjacent to the Property is a 50 acre tract (the Skeuse-Dallas Tract) owned by Skeuse-Dallas Associates, the partners of which are Thomas Skeuse, Brain Skeuse, Bob Dallas, and his sons. The Hilltop Property is currently under a contract for sale to a developer who plans a residential project. It is represented that the Skeuse-Dallas Tract will be held for development at some undetermined time in the future. The Plan acquired the Property with the knowledge that it was not immediately marketable but would become so as soon as sewer and water systems were installed on the Hilltop Property. It is represented that the Plan's development costs would be reduced by connecting into such systems once developed on the adjacent properties.

4. Beginning November 25, 1985, Brian Skeuse has occupied the Property as a personal residence without a formal lease and rent free.[9] During this time, he expended a total of $36,000 to improve and maintain the Buildings and the surrounding Land.

5. Brian Skeuse requests exemption relief for the proposed sale of the Buildings and ten (10) acres of the Land for cash in the amount of $233,836; provided such price in not less than the fair market value on the date of sale. The Trustees represent that the Buildings plus 3½ acres of the Land have been actively marketed for four (4) years through ads in local newspapers and through brochures mailed to real estate brokers at a sales price of $215,000. Though several potential buyers were offered greater acreage as an inducement to agree to purchase the Buildings, Brian Skeuse's offer is the only *bona fide* offer to purchase the Buildings received by the Trustees, since the Plan acquired the Property.

6. The Buildings plus ten (10) acres of the Land were appraised for $220,600 as of August 1, 1986, by Dale C. Blazure, I.C.A. (Mr. Blazure) of Blazure Agency located in Annandale, N.J. In Mr. Blazure's opinion, a premium value of 6 percent of the current fair market value of the Buildings and ten (10) acres of the Land should be added to the price paid by Brian Skeuse, because he also owns an interest in adjacent property. Mr. Blazure certifies that he has no past, present, or future contemplated interest in the Land and Buildings, other than preparing the appraisal report. Mr. Blazure has been licenced as a real estate sales agent in New Jersey for seventeen (17) years and as a broker for eleven (11) years. It is represented that Mr. Blazure has completed all the necessary appraisal courses to qualify as a certified tax assessor and also as an independent senior fee appraiser. Mr. Blazure states he has experience with appraisals on estates, condemnations, and commercial and residential properties in the state of New Jersey.

7. The applicants maintain that the Plan will retain the approximately 24.58 acres of Land remaining after the sale of ten (10) acres to Brian Skeuse. It is represented that this is the more valuable Land as it is relatively flat and cleared and can be developed at a modest cost. The Plan will retain a right of way access to the remaining Land which will protest its value.

8. In summary, the applicants represent that the proposed transaction meets the statutory criteria for exemption under section 408(a) of the Act because: (a) The sale is a one-time transaction for cash; (b) the Plan will incur no fees, commissions, or expenses in connection with the sale; (c) the proceeds of the sale could be used to acquire higher yielding more liquid investments for the Plan or to finance development of the remaining Land; and (d) the sales price will be the fair market value as determined by a qualified independent appraiser.

Fur Futher Information Contact: Angelena Le Blanc of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

J.R. Olson Company, Inc. Defined Benefit Pension Plan (the Plan), Located in San Diego, California

[Application No. D–6838]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale (the Sale) on August 5, 1986, of a certain parcel of real property (the Property) by the Plan to James R. Olson and Marci L. Olson, (the Olsons), husband and wife, and disqualified persons with respect to the Plan, provided that the terms of the Sale were not less favorable to the Plan than terms obtainable in an arm's-length transaction with an unrelated party.

Effective Date: If granted this exemption will be effective August 5, 1986, the date the parcel of real property was sold by the Plan to the Olsons, as described in this proposed exemption.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with one participant, James R. Olson (Mr. Olson), who is also the fiduciary of the Plan. As of February 28, 1986, the assets of the Plan totalled $345,480.72. Mr. Olson is the sole owner of the sponsoring employer of the Plan, J.R. Olson Company, Inc. (the Employer).[10]

The Employer was incorporated during April of 1978 in order to acquire a franchise permitting the building of a fast food restaurant chain in Orange

[9] The applicants represent that they will file the Form 5330 with the Internal Revenue Service and will pay the applicable excise tax due on the "amount involved" and any back rental plus interest which may be due for Brian Skeuse's use of the Property from the date of his initial occupancy as determined under section 4941 of the Code within 60 days after the publication of the grant of an exemption in the **Federal Register.**

[10] Since Mr. Olson is the only participant of the Plan and is the sole owner of the Employer, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

County, California. One year later the Employer sold its franchise and obtained a real estate broker's license from the State of California. The Employer then became affiliated with Business Properties Brokerage Company (BPB) in the capacity of leasing and selling office developments. During 1982 the Employer terminated its contract with BPB and became affiliated with Iliff, Thorn & Company and continues to perform in a similar capacity as it performed with BPB.

2. During October of 1984 Mr. Olson, as fiduciary of the Plan, caused the Plan to purchase the Property for the sum of $58,000. The Property, initially consisted of an unimproved one-quarter acre lot (Lot 9, Block 7, Fairway Point Village 1) in a planned subdivision of Sunriver, Oregon. Subsequently, during January of 1986, the Plan had constructed on the lot for the sum of $188,017, a single family residence of approximately 2,446 square feet. This undertaking by the Plan with respect to the Property was prompted by Mr. Olson who had observed the sales of speculative housing in the Sunriver planned division while vacationing in Oregon. He concluded that the Plan could make the same investment in speculative housing and experience a profitable return within a short period of time. The profitable and quick sale anticipated by Mr. Olson did not occur. Upon completion of the construction, the Property was listed for sale with the principal real estate firm in Sunriver. During the six months of its listing, the Property failed to generate any written offers. Only one oral inquiry was received and this involved a sales price that would have caused the Plan to suffer a loss. The Property was not used by or leased to anyone while it was owned by the Plan.

3. In order to avoid further expenses and taxes to the Plan and the continuing decline in the market value of the Property, the Olsons purchased the Property on August 5, 1986, for the cash sum of $246,000. Mr. Olson had concluded that it was to the advantage of the Plan to have the Olsons purchase the Property for a consideration of no less than the appraised fair market value of the Property. On June 30, 1986, the Property had been appraised to have a fair market value of $242,500 by a qualified independent appraiser, Mr. Gary Ruch of Gary Ruch, Inc., Bend, Oregon. Mr. Olson was motivated to undertake the Sale when he had been informed that profitable sale to an unrelated party in the near future was unlikely because of the existing economy in Oregon and the abundance of similar properties in the vicinity of the Property. In addition, the Sale was prompted by the availability to the Olsons of the necessary financing at a relative low interest rate.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria for an exemption under section 4975 of the Code because: (a) The Sale was a one-time transaction for cash with no expenses incurred by the Plan; (b) the Plan sold the Property at a price higher than its fair market value as determined by an independent qualified appraiser; (c) the Plan is able to avoid any future expenses or losses that would be incurred from owning the Property; (d) the Plan will be able to invest the proceeds from the Sale in income producing assets; and (e) Mr. Olson is the only participant affected by the transaction and he caused the transaction to be consummated.

Notice to Interested Persons: Because Mr. Olson is the sole participant of the Plan and is the only shareholder of the Employer, it has been determined by the Department that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received within 30 days of the date of publication of this notice of proposed exemption.

For further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Ohio Operating Engineers Apprenticeship Fund (the Plan) Located in Cincinnati, Ohio

[Application No. D–6860]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act shall not apply to: (1) The sale of a parcel of real property (the Property) by the Plan to Mr. and Mrs. Neal Hartfield (the Hartfields), for $230,000 in cash, provided such amount is not less than the fair market value of the Property on the date of the sale; and (2) the leaseback by the Plan from the Hartfields of a portion of the Property, under the terms described in this notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is an employee welfare benefit plan established and maintained as a result of collective bargaining between the Labor Relations Division, Ohio Contractors Association and the Associated General Contractors, Inc. and International Union of Operating Engineers, Local No. 18 (and its constituent entities) A.F.L.–C.I.O. to provide apprenticeship training to apprentice operating engineers. The Plan has approximately 315 participants.

2. Mr. Hartfield is a shareholder, director, officer and employee of Mid Ohio Mechanical, Inc. (MOM), an Ohio corporation with its principal office in Granville, Ohio. MOM is a contributing employer to the Plan and both MOM and the Hartfields are parties in interest with respect to the Plan.

3. The Plan acquired the Property in 1969 for $41,000. The Property consists of a parcel of land containing approximately 7.16 acres, a structure containing five offices and a shop for repairs of mechanical equipment, and a storage building. The Plan had various improvements made to the Property in 1970 and 1971, and the initial cost plus additions and improvements is approximately $161,000. The Property is located at 1844 Lancaster Road, Granville, Ohio. The Property was used by the Plan for many years to operate the apprenticeship program.

4. In 1984, the trustees of the Plan determined that the Property was no longer needed for use in connection with apprenticeship training in the operation of heavy mechanical equipment. Therefore, the trustees determined to place the Property on the open market for sale. The applicants represent that the Property has proven to be difficult to sell. The Hartfields have now agreed to purchase the Property from The Plan for $230,000 in cash. The Plan will pay no commission with respect to the sale. The sale agreement was entered into after a lengthy period of negotiations between the Hartfields and the trustees of the Plan. The Plan's trustees determined that the terms of the sale agreement are appropriate for the Plan and in the Plan's best interests. The applicants represent that neither Mr. nor Mrs. Hartfield is a fiduciary with respect to the Plan. The Hartfields are not on the Board of Trustees of the Plan, nor do they have any control over the named fiduciaries of the Plan. Thus, the decision to enter into the transactions was made on behalf of the Plan solely by its trustees, and the Hartfields had no influence over such decision.

5. Mr. Jack Olpp (Mr. Olpp), an independent real estate appraiser located in Newark, Ohio, has appraised the Property as having a fair market value of $227,000 as of September 12, 1986.

6. In addition to the sale, there are two leaseback arrangements as part of the agreement. The Plan as seller is granted the right to store heavy machinery on the .83 acre site at the rear of the building for a period of six months following the closing without charge or expense. If the Plan desires to continue to utilize this area for storage after the expiration of the six month period, and the Hartfields agree, the Plan shall pay as rent therefor the sum of $200 per month. Moreover, the Plan will lease back the front two offices, reception area and rest room, comprising approximately 600 square feet of the building, for two years at a rental of $500 per month, including all utilities, taxes, building insurance and exterior maintenance. Mr. Olpp has represented that the leaseback terms are fair and equitable to the Plan in light of rents currently being paid in the geographical area.

7. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (1) The sale is a one-time transaction for cash; (2) the sale price is more favorable to the Plan than that determined by an independent appraiser, who has also represented that the leaseback terms are fair and equitable to the Plan; and (3) the Plan's trustees have determined that the proposed transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Racine Construction Industry Pension Fund (the Plan) Located in Racine, Wisconsin

[Application No. D-6890]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the provision of long term mortgage financing by the Plan to property owners where such financing is to be used to retire construction loans extended by banks which are non-fiduciary parties in interest with respect to the Plan, provided that:

A. Such mortgage loan is expressly approved by a fiduciary independent of the construction lender who has authority to manage or control those Plan assets being invested;

B. The terms of each such transaction is not less favorable to the Plan than the terms generally available in an arm's-length transaction between unrelated parties; and

(C) No investment management, advisory, underwriting or sales commission or similar compensation is paid to the construction lender with regard to such transaction.

Summary of Facts and Representations

1. The Plan is a multiemployer pension plan which had approximately 956 participants and net assets of approximately $13,322,115 as of December 31, 1985. The board of trustees of the Plan is comprised of three employer-appointed trustees and three union-appointed trustees (collectively, the Trustees), with the employer and union trustees entitled to cast an equal number of aggregate votes. Investment decisions for the Plan are made by the Trustees.

2. The Plan proposes to engage in long-term mortgage financing for certain commercial construction projects. The Plan does not propose to engage in so-called interim or construction financing. Construction of such commercial properties may be performed by persons who are parties in interest or disqualified persons with respect to the Plan.[11] Specifically, however, the transaction for which exemptive relief is sought is the payoff by the Plan of the short term construction lender with proceeds from the long-term mortgage loan, where the short-term construction lender is a party in interest with respect to the Plan by reason of servicing the Plan's mortgages. In no case, however, will the short term lender be a fiduciary with respect to the Plan.

3. Long-term mortgage financing transactions involving the Plan typically begin when a prospective borrower approaches a mortgage banker [12] to discuss financing. The mortgage banker makes an initial determination as to the feasibility of the proposed project. If that determination is favorable, the prospective borrower enters into an agreement authorizing the mortgage banker to act as his agent in attempting to obtain long-term financing. Typically, this agreement provides that the mortgage banker will receive a one point "origination fee" (an amount equal to 1% of the local loan) [13] from the borrower for obtaining a long-term financing commitment. Up to this point, the Plan has had no involvement in the transaction. Also to this point, the prospective borrower typically would not have obtained short-term construction financing.

In the next phase, the mortgage banker prepares a loan offering for submission to potential lenders. If the mortgage banker believes the project meets the Plan's long-term lending criteria, he presents a copy of the loan offering for consideration by the Trustee. All loan offerings must be prepared in accordance with the Trustee's criteria and must offer a return equal to the current rate for similar financing. Satisfaction of the published criteria does not, however, result in automatic approval. Financing applications are individually considered and acted upon by the Trustee after it is determined that they satisfy the published criteria. Upon review of the loan offering, the Trustee may accept the proposal or offer a counter-proposal on terms different from those originally proposed. If the proposal is accepted, or if the borrower accepts a counter-proposal, the Plan would issue a commitment to provide long-term financing.

4. The Plan's mortgage application form states, among other things, that all construction, except that which is not within the jurisdiction of a union participating in the Plan, must be performed by contractors and subcontractors contributing to and who are in good standing with the Plan and who employ 100 percent AFL-CIO union construction labor. Construction, including all landscaping, must be 100 percent completed by such labor. The borrower must furnish a list to the Plan showing the names of the general contractor and subcontractors and any addition or substitution to that list must be submitted for review by the Plan before such addition or substitution could be made.[14]

[11] The Department notes that where the construction on the property which secures a mortgage loan made by the Plan was by a contributing employer, and a principal of such employer exercises fiduciary authority in approving the Plan's investment in the mortgage, a prohibited transaction may occur, which transaction would not be covered by this exemption.

[12] The Plan makes financing commitments only in Racine County.

[13] The origination fee charged on any given situation depends on the then existing "market" conditions.

[14] With respect to the geographic and union labor criteria, it should be noted that section 404(a)(1) of Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries and for the

Continued

5. The applicant represents that the total unpaid balance of the Plan's mortgage portfolio shall not, at any time, exceed 25 percent of the Plan's total assets. In addition, the total unpaid balance of any one mortgage which has been committed to and closed by the Plan shall not exceed 10 percent of the Plan's total assets. Mortgage financing applications will only be accepted from individuals who are not parties in interest with respect to the Plan. In some instances, financing applications may be received and considered prior to the selection of general contractors or subcontractors for the project involved. The Trustee considers financing applications without regard to the identity of the general contractor and/or the subcontractors who may potentially be selected (or who may already have been selected if such selection was made prior to submission of the financing application). The Trustee's decisions on the issuance of mortgage commitments are final.

6. The borrower normally obtains construction financing through the mortgage banker. Wen the borrower obtains the short-term construction loan a tri-party agreement may be entered between the Plan, borrower and mortgage banker. The tri-party agreement confirms the parties' understanding that upon completion of the project in accordance with Plan requirements, the Plan will provide the approved loan amount in order to substitute its financing for the short-term funds. The agreement provides for simultaneous assignment of the short-term lender's first mortgage lien to the Plan. This agreement is not required by all mortgage bankers, and, in the absence of an agreement, substitution of the Plan's long-term loan for short-term financing follows the same assignment procedure. The mortgage banker then secures note and mortgage instruments (which documents are prepared with a view to their furture assignment) from the borrower and the borrower begins construction.

Throughout construction, the mortgage banker monitors the project and its progress, making the necessary construction inspections and paying out short-term funds as the work progresses. Upon completion of the project, the mortgage banker makes the necessary inspections and final payouts and a loan closing is scheduled between the borrower and the Plan.

7. Upon completion of the project, the Plan's commitment remains contingent until satisfaction of certain conditions. The conditions include: (i) Issuance of an appraisal by a member of the American Institute of Appraisers showing that the Plan loan will not exceed 75 percent of the project's appraised value,[15] (ii) issuance of a title policy insuring the first lien status of the Plan's mortgage interest in an amount at least equal to the amount of the loan, (iii) receipt of an architect's certificate that construction conforms to the plans and specifications and meets applicable zoning and ordinance restrictions, (iv) issuance of a certification from the appropriate municipal building inspector that the project is complete and ready for occupancy, and (v) presentation of a hazard insurance policy in an amount at least equal to the Plan's loan and naming the Plan payee. If all those conditions are met, the Plan transfers its committed loan funds in exchange for an assignment of the note and mortgages. Typically, the borrower would sign a direction to pay, authorizing the Plan to make the loan to the borrower by paying the loan amount to the mortgage banker. Other documentation (such as title insurance policies, certifications and appraisals) are also reviewed and tranferred at this time.

8. As part of the loan offering, the mortgage banker may agree to service the long-term loan on behalf of the Plan. This servicing includes receipt and handling of scheduled payments, preparation and maintenance of accounts (showing allocation of payments between principal and interest), periodic inspections of the property, and demands for proof of continuing hazard insurance coverage. As compensation for such service, the mortgage banker typically receives from the Plan an amount equal to one-eighth of one percent per annum, of the unpaid amount of the loan.[16]

9. In summary, the applicant represent that the statutory criteria contained in section 408(a) of the Act have been satisfied because:

(a) The Plan has vigorous standards for the approval of any mortgage loan;

(b) The Trustee will review and approve all application for financing;

(c) No more than 25% of the Plan's assets will be invested in mortgage loans; and

(d) No mortgage loans will be made to parties in interest.

For Further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules.

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exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. In order to act prudently in making investment decisions, the trustees must consider, among other factors, the availability, risks, and potential return of alternative investments for the plan. Investing plan assets in loans meeting these criteria would not satisfy section 404(a)(1) if such loans would provide the plan with less return, in comparison to risk, than comparable investments available to the plan or if such loans would involve a greater risk to the security of plan assets than other investments offering a similar return.

Thus, in deciding whether and to what extent to invest in mortgage loans, the trustees must consider only factors relating to the interests of plan participants and beneficiaries in their retirement incomes. A decision to make a loan may not be influenced by a desire to stimulate business in a particular geographic area or to encourage the use of union labor unless the investment, when judged solely on the basis of its economic value, would be equal to or superior to alternative investments available to the plan.

[15] In this connection, it should be noted that while the Plan may agree to lend up to 75 percent of appraised value, the loan will not, in any event, exceed actual borrower disbursements. Thus, the Plan loan will reimburse for costs but will not provide any additional funds that the borrower might otherwise use for his own account prior to repayment.

[16] The compensation paid for mortgage servicing with respect to a given mortgage depends on the then existing "market" conditions.

Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of November, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-25953 Filed 11-17-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least monthly of all agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which reduce the records retention period for records already authorized for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before January 20, 1987.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records. Federal agencies prepre records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

This public notice identifies the Federal agencies and their appropriate subdivision requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Department of the Air Force, Directorate of Administration, Records Management Branch (N1-AFU-87-3). Reports and other records pertaining to assessment of liability for loss of government property.

2. Department of the Air Force, Directorate of Administration (N1-AFU-87-4). Lisitngs used in payrolling.

3. Department of the Army, Office of the Adjutant General (NC1-AU-85-63). Competition Advocacy Files.

4. Department of Agriculture, Agricultural Research Service, Market Quality Research Division (N1-136-86-2). Line project records created between 1953-64 relating to the testing, shipping and storage of fruit, and include project description forms and electrostatic copies of forms used to submit manuscripts for publication.

5. Department of Agriculture, Agricultural Research Service (N1-310-86-2). Grant case files, 1924-53, from the Bureau of Animal Industry (defunct) documenting submission of applications for grants or cooperative projects.

6. Department of Agriculture, Agricultural Research Service (N1-310-86-3). Bureau of Animal Industry (defunct) monthly, quarterly, and annual reports relating to staffing, status of experiments, cooperative efforts; experiment working papers; and miscellaneous correspondence, drawings, and sketches relating to animal husbandry activities of the Bureau.

7. Central Intelligence Agency (NC1-263-84-11). The CIA shedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

8. Federal Maritime Commission (N1-358-86-1). Update to the Commission's comprehensive schedule including disposition standards for agreement files.

9. General Services Administration, Office of Administration, Audit Resolution Program (N1-269-87-3). Records include contract and internal audit resolution case files and GAO audit reports case files.

10. Department of Housing and Urban Development, Office of Public Housing (N1-207-86-2). Land docket files, printed legislative files and defense housinig land record.

11. Department of Housing and Urban Development, New Communities Development Corporation (NCDC) (N1-207-86-4). Drawings of service systems, including fire protection, sewage, and drainage sytems, that do not have sufficient value for documenting unique aspects of NCDC planned communities.

12. United States Information Agency, Voice of America (N1-306-86-5). Records of the Tape Library consisting of paper copies of a numerical index now maintained electronically, a selective name index, and extra copies of a master set name index scheduled for archival retention.

13. National Archives and Records Administration, Office of Records Adminstration (N1-GRS-87-1). Revision of General Records Schedule 12 (Communications Records), item 4 (Telephone Summaries) to include disposition standards for "call detail" records.

14. Office of Personnel Management, Office of Information Management (N1-146-87-1). Central Office master addressee-index of central office correspondence.

15. Department of State, U.S. National Commission for UNESCO (N1-59-86-4). Motion picture film from the Library of the Commission that were produced by UNESCO.

16. Tennessee Valley Authority, Office of Energy Use, Division of Energy Use and Distributor Relations (NC1-142-85-6). Electric sales statistical data, exclusive of annual reports that have

been designated for future transfer to the National Archives.

17. Tennessee Valley Authority, Division of Engineering Design, Architectural Support Branch (N1–142–86–3). Site planting and planning drawing, 1951–1975.

18. Department of Transportation, Office of the Secretary, Departmental Office of Civil Rights (N1–398–86–3). Minority certification appeals file.

Dated: November 12, 1986.

Frank G. Burke,

Acting Archivist for the United States.

[FR Doc. 86–25932 Filed 11–17–86; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant); Receipt of Petition for Director's Decision

Notice is hereby given that by petition dated October 17, 1986, Mr. Wells Eddleman and the Coalition for Alternatives to Shearon Harris (CASH) requested that the Director of Nuclear Reactor Regulation issue an order to Carolina Power & Light Company (CP&L) to require it to show cause why the construction permit for its Shearon Harris facility should not be modified or revoked and issuance of its operating license be denied or delayed pending resolution of a number of issues. The bases for the requested action are alleged deficiencies in CP&L's quality assurance program for electrical safety-related components, alleged lack of requisite character and technical capability to operate the Shearon Harris facility as evidenced by two recent employee discrimination cases before the Department of Labor, and allegations of improper documentation and performance of certain construction procedures.

The petition is being considered pursuant to 10 CFR 2.206 of the Commission's regulations. A copy of the petition is available for inspection in the Commission's Public Document Room, 1717 H. Street, NW., Washington, DC 20555, and at the local Public Document Room for the Shearon Harris facility located at the Richard B. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina 27610.

Dated at Bethesda, Maryland, this 12th day of November, 1986.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86–26017 Filed 11–17–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–440]

Cleveland Electric Illuminating Co., et al.; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF–58 to the Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and the Toledo Edison Company (licensees) which authorizes operation of the Perry Nuclear Power Plant, Unit No. 1 (the facility), at reactor core power levels not in excess of 3579 megawatts thermal (100 percent rated power) in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan. The issuance of this License was approved by the Nuclear Regulatory Commission at a meeting on November 7, 1986, and supersedes the license for fuel loading and low power testing, License NPF–45 issued on March 18, 1986.

The Perry Nuclear Power Plant, Unit No. 1, is a boiling water reactor located near Lake Erie in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio.

The License is effective as of the date of issuance. The application for the License complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulatons in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on February 13, 1981 (46 FR 12372).

The Commission has determined that the issuance of this License will not result in any Environmental impacts other than those evaluated in the Final environmental Statement since the activity authorized by the License is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–58, with Technical Specifications (NUREG–1204) and the Environmental Protection Plan; (2) the reports of the Advisory Committee on Reactor Safeguards, dated July 13, 1982 and March 17, 1986; (3) the Commission's Safety Evaluation Report, dated May 1982 (NUREG–0887), and Supplements 1 through 10; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement, dated August 1982 (NUREG–0884).

These items are available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of Facility Operating License No. NPF–58 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of BWR Licensing. Copies of the Safety Evaluation Report and its Supplements 1 through 10 (NUREG–0887) and the Final Environmental Statement (NUREG–0884) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, or may be ordered by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. All orders should clearly identify the NRC publication number and the requesters GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Bethesda, Maryland, this 13th day of November 1986.

For The Nuclear Regulatory Commission.

Walter R. Butler,

Director, BWR Project Directorate No. 4, Divison of BWR Licening.

[FR Doc. 86–26018 Filed 11–17–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–255]

Consumers Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–20, issued to Consumers Power Company (the licensee), for operation of the Palisades Plant located in Van Buren County, Michigan.

The proposed license amendment would provide Technical Specifications applicable to an expanded storage capability for spent fuel at Palisades Plant. This expansion is to be accomplished by installing new storage racks in approximately one-half of the spent fuel pool. The proposed modifications will increase the spent fuel storage capacity of Palisades from 798 to 892 fuel assemblies, thus allowing a full core discharge capability for two fuel cycles (Cycle 8 and Cycle 9) longer than with exising racks. The spent fuel storage pool will be divided into two reigons. Region 1 contains the existing storage racks which have a nominal center-to-center spacing of 10.25 inches and its designed to accommodate non-irradiated, fully enriched fuel. Region 2 will contain the new racks which have a nominal center-to-center spacing of 9.17 inches. Placement of fuel in Region 2 is restricted by burnup and enrichment limits.

The specific changes proposed to Technical Specifications are:

Specification 4.2.1—Reference 7 for Table 4.2.1 has been expanded to include the new Specification 5.4.2f.

Specification 5.4.2b—This section is deleted because no spent fuel storage racks with an 11.25-inch center-to-center distance exist in the Palisades spent fuel pool. A single rack with 11.25 inch by 10.69 inch center-to-center spacing will be located in the spare (north) tilt pit. The other racks which will exist in the spent fuel pool and spare (north) tilt pit have either 10.25 inch (Region I) or 9.17 inch (Region II) center-to-center distances. [These three types of racks are covered by Specifications 5.4.2c and 5.4.2d.]

Specification 5.4.2c—This section has been expanded to describe the two region spent fuel pool and the existing racks which make up Region I of the spent fuel pool.

Specification 5.4.2d—Describes the Region II racks and the method used to determine which spent fuel can be stored in Region II.

Specification 5.4.2e—Limits the maximum amount of U–235 which can be stored in the spent fuel pool and, therefore, ensures the applicability of the calculations used in the Safety Analysis.

Specification 5.4.2f—Clarifies the requirement that spent fuel pool water boron concentration will be at least 1720 ppm.

Specification 5.4.2 g and h—Changes the alpha character designation.

Specification 5.4.2i—Restricts the storage of spent fuel in Region II racks to that fuel which has the required minimum burnup and assures the fuel enrichment limits assumed in the Safety Analysis will not be exceeded.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By December 18, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designate by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petititoner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the basis for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, is authorized to use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rule implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 (October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument. The presiding officer may grant an untimely request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G, apply.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Ashok C. Thadani: (petitioners' name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 20, 1986 as supplemented by submittals dated April 16 and 24, July 24 and October 16, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Bethesda, Maryland, this 12th day of November 1986.

For the Nuclear Regulatory Commission

Ashok C. Thadani,

Director, PWR Project Directorate No. 8, Division of PWR Licensing-B.

[FR Doc. 86-26019 Filed 11-17-86; 8:45 am]

BILLING CODE 7590-01-M

[DOCKET NO. 50-395]

South Carolina Electric & Gas Co. and South Carolina Public Service Authority; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 54 to Facility Operating License No. NPF-12, issued to South Carolina Electric and Gas Company, and South Carolina Public Service Authority (the licensees), which revised the Technical Specifications for operation of the Virgil C. Summer Nuclear Station, Unit 1 (the facility) located in Fairfield County, South Carolina. The amendment is effective as of the date of issuance and until the end of the fifth refueling outage.

The amendment changes the Technical Specifications to modify steam generator tube plugging requirements for tube defects located in the tubesheet region.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action in the **Federal Register** on March 21, 1986 (51 FR 9907). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact (51 FR 26484, July 23, 1986) related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated May 1981.

For further details with respect to the action see (1) the application for amendment dated January 16, 1986, revised August 15, and September 15, 1986, and as supplemented May 8, and October 20, 1986, (2) Amendment No. 54 to License No. NPF-12, and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., and at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29810. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A.

Dated at Bethesda, Maryland, this 5th day of November, 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-26020 Filed 11-17-86; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; MDS Acquisition Corp.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a joint request from MDS Acquisition Corporation and Culbro Corporation for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five-plan-year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Before granting an exemption the PBGC is required to give interested persons an opportunity to comment on the exemption request. The purpose of this notice is to advise interested persons of the exemption request and solicit their views on it.

DATE: Comments must be submitted on or before December 18, 1986.

ADDRESSES: All written comments (at least three copies) should be addressed to: Director, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. The non-confidential portions of the request for an exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–956–5050 (202–956–5059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) the purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) the purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) the contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchasers's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfied the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 2643.12–2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information with the meaning of section 552(b)(4) of the Freedom of Information Act.

Under § 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a joint request from MDS Acquisition Corporation ("the Buyer") and the Culbro Corportion ("the Seller") for an exemption from the bond-escrow requirement of section 4204(a)(1)(B) as it applies to the purchase of the assets of the Metropolitan Distribution Services, Inc. ("the Purchased Facility") from the Culbro Corporation. In the information that supports the request, the Parties represent, among other things, that:

1. On September 15, 1986, MDS Acquisition Corporation purchased from the Culbro Corporation the assets of Metropolitan Distribution Services, Inc.

2. Employees at the Purchased Facility are covered by the following multiemployer pension plans and, but for the application of section 4204, the Seller would have the following estimated withdrawal liability:

Plan name	Estimated liability
Trucking Employees of North Jersey (Local 560)	$25,000
Local 153 Pension Fund	0
IUE AFL-CIO Pension Fund (Local 332)	0
Teamsters Pension Fund of Philadelphia and Vicinity (Local 331)	0
Local 805 Pension Fund	260,000

3. The Buyer has assumed the obligation to contribute to the multiemployer pension plans on behalf of the employees at the Purchased Facility.

4. The Seller has agreed to be secondarily liable for any withdrawal liability should the Buyer withdraw from the Fund within five years of the sale.

5. The amount of the bond/escrow that would be required of the Buyer under section 4204(a)(1)(B) is approximately $500,000 based on the 1985 contributions or the 3-year average of the contributions to each plan.

6. The Buyer's net tangible assets immediately after the purchase exceed the withdrawal liability the Seller would have had if not for section 4204. In support of this assertion, a pro-forma financial statement and balance sheet were submitted that indicate that, immediately following the purchase, the buyer's net tangible assets were $1,000,000, exceeding the estimated withdrawal liability of the Seller by more than $700,000. Further, the Buyer submitted projections of net income over the next five years that indicate after tax income growing from $491,000 to $1,465,000.

8. Copies of the request were sent to each concerned Fund.

Comments

All interested persons are invited to submit written comments on the pending exemption request to the above address. All comments will be made a part of the record. Comments received, as well as the relevant non-confidential

information submitted in support of the request, will be available for public inspection at the address set forth above.

Issued at Washington, DC, on this 12th day of November, 1986.

Kathleen P. Utgoff,

Executive Director.

[FR Doc. 86-25943 Filed 11-17-86; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23803; File Nos. 4-308 and SR-NYSE-86-17]

Self-Regulatory Organizations; Proposed Rule Change; New York Stock Exchange, Inc.

AGENCY: Securities and Exchange Commission.

ACTION: Request for additional comments and announcement of date of hearings.

SUMMARY: The New York Stock Exchange, Inc. ("NYSE") currently prohibits the listing of issuers that have outstanding common stock with unequal voting rights. The Commission has published notice of a proposed NYSE rule change that would permit listing of issuers with shares that have unequal voting rights, provided that certain conditions are satisfied. In view of the importance and complexity of the issues raised by the proposed rule change, the Commission has determined to hold public hearings on December 16 and 17, 1986. This release sets forth particular issues of interest to the Commission that commentators may wish to address either in written submission or during the public hearings.

DATES: Written comments should be submitted no later than December 5, 1986. Persons interested in appearing at the hearings should submit their requests, in writing, no later than November 26, 1986. The schedule of appearances will be announced by the Commission shortly before the hearings commence. Persons scheduled to appear should submit the original and ten copies of their written testimony by December 12, 1986.

ADDRESSES: Interested persons who will not be appearing at the hearings should submit three copies of their views and comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should refer to File Nos. 4-308 and SR-NYSE-86-17. Persons interested in appearing at the hearings should submit their requests to Mr. Katz at the same address. Public hearings will be held in the Commission's public meeting room, Room 1C30, at the above address. All written submissions and hearing transcripts will be made available for public inspection and copying in the Commission's Public Reference Section.

FOR FURTHER INFORMATION CONTACT: Ellen K. Dry, Division of Market Regulation, Stop 5-1, 450 Fifth Street, NW., Washington, DC 20549 (202/272-2843).

SUPPLEMENTARY INFORMATION:

I. Introduction

Since the 1920s, the NYSE generally has refused to list any company having classes of common stock with disparate voting rights. This rule is often referred to as the "one share, one vote" rule. [1] On September 16, 1986, the NYSE, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[2] submitted to the Commission a proposed rule change that would allow companies listed on the NYSE to create a class or classes of common stock with unequal voting rights, provided that certain conditions relating to the creation of unequal voting rights are satisfied. Notice of the proposed rule change (File No. SR-NYSE-86-17) was given in Securities Exchange Act Release No. 23724 (October 17, 1986), 51 FR 37529.

Due to the importance and complexity of the issues raised by the proposed rule change, the Commission has decided to hold public hearings rule change, the Commission has decided to hold public hearings to explore more fully the matters discussed in this release, as well as other issues raised by the proposed rule change.[3] This release highlights some of the issues raised by the proposed rule change that commentators may wish to address.

II. Background

The NYSE's Listed Company Manual provides standards that must be met by an issuer in order to list the company's securities on the NYSE. These standards cover a variety of corporate governance matters, including voting rights. Currently, the NYSE prohibits the listing of a class of stock having unusual voting provisions that tend to nullify or restrict the voting rights of a class, or that has voting power not in proportion to the equity interest of the class ("disparate voting rights stock").[4] Accordingly, companies listed on the NYSE must provide one vote for each share of common stock issued. The American Stock Exchange, Inc. ("Amex") has less stringent voting rights requirements, and the National Association of Securities Dealers, Inc. ("NASD") has no such requirements.[5]

In June 1984, after several listed companies proposed recapitalizations involving the creation of a second class of common stock having disparate voting rights,[6] the NYSE formed the Subcommittee on Shareholder Participation and Qualitative Listing Standards ("Subcommittee") to consider the continued appropriateness of the Exchange's one share, one vote rule. Pending action by the NYSE Board of Governors' on the Subcommittee's recommendations, the NYSE imposed a moratorium on enforcement of the one share, one vote rule.

In January 1985, the Subcommittee published a report that recommended permitting the listing of issuers with classes of common stock having disparate voting rights, provided that certain conditions were met.[7] Following the publication of the recommendations of the Subcommittee, hearings were held in the United States House of Representatives on the issue of one share, one vote.[8] At the same time, interested members of Congress and the Commission encouraged the NYSE, the Amex and the NASD to explore the possibility of uniform shareholder voting standards.[9] In addition, in June 1985,

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[1] Since June 1984, however, approximately 22 companies listed on the NYSE suspended its enforcement of the one share, one vote rule pending an analysis of the policy and a decision on whether it should be modified.

[2] 15 U.S.C. 78s(b).

[3] The Commission authorized public hearings on the NYSE's proposal at an open meeting on October 16, 1986.

[4] NYSE Listed Company Manual, § 313.00.

[5] *See* note 9, *infra.*

[6] For example, General Motors Corporation, Dow Jones & Company, Inc., Hershey Foods Corporation, and The Coastal Corporation have issued stock having disparate voting rights since early 1984.

[7] NYSE Subcommittee on Shareholder Participation and Qualitative Listing Standards, *Initial Report—Dual Class Capitalization* (January 3, 1985) ("Subcommittee Report"). The conditions were: (1) Approval by two-thirds of all shares; (2) if the isssuer has a majority of independent directors, approval by a majority of such directors; if no majority of independent directors, approval by all independnet directors; (3) a ratio of voting differential no greater than one to ten; and (4) substantially the same rights of the holders of the two classes of common stock except for voting power per share. Subcommittee Report at 4-5.

[8] Impact of Corporate Takeovers: Hearings Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing and Urban Affairs, 99th Cong., 1st Sess. 1110-234 (1985).

[9] The Amex's voting rights standards are less stringent than those of the NYSE. *See* Amex Company Guide, § 122. The NASD has no voting rights standards for stocks quoted on NASDAQ.

legislation was introduced that would have imposed a one share, one vote rule on publicly traded securities regardless of the market in which the securities are traded.[10]

The joint efforts by the NYSE, Amex, and NASD to develop acceptable uniform listing standards concerning voting rights were not successful.[11] On September 16, 1986, the NYSE submitted to the Commission a proposed rule change to modify its one share, one vote standard. In the NYSE's view, its proposal reflects the recognition "that the Exchange can neither dictate corporate governance standards of other self-regulatory organizations ["SROs"], nor unilaterally maintain such standards not required by other market centers in today's competitive environment." [12]

III. Description of the NYSE Proposal

Under the NYSE's proposal, the one share, one vote rule would be modified to permit the listing of a class or classes of common stock having disparate voting rights, if a majority of the issuer's independent directors, and a majority of its public shareholders[13] eligible to vote, have approved such class or classes.[14] Companies that apply for a listing on the NYSE and have outstanding any class of stock with disparate voting rights, must obtain the required approvals prior to listing. No approval is necessary if such stock: (1) Was outstanding at the time the company first became a public company, or (2) was distributed pro rata among the distributor's common shareholders in a spin-off transaction where the distributor is not the issuer.[15]

In its letter accompanying the proposed rule change, the NYSE states that the proposal to permit companies to adopt classes of stock having disparate voting rights "maintain[s] investor safeguards and fosters continued shareholder participation in corporate policy." [16] The NYSE also points out that these approval requirements exceed "requirements of state law as well as those of any other self-regulatory organization." [17] Furthermore, the Board of Directors' decision to adopt the rule proposal takes into account increases that have occurred since adoption of the NYSE's one share, one vote standard in corporate governance initiatives that provide public investors with added protections.[18]

IV. Request for Comments

The modification of the NYSE's longstanding one share, one vote policy raises a number of significant legal and policy issues. The rule dates back to the 1920s, a period during which there was a public outcry when several large NYSE listed companies, such as Dodge Brothers, Inc. and Industrial Rayon Corporation, distributed common stock having no voting rights.[19] Scholars have debated the advantages and disadvantages of dual classes of stock [20] and argued for and against federal action in this area.[21] Although the intense debate within the scholarly community does not provide clear answers, it does serve to show that the NYSE's proposal to modify its one share, one vote rule raises significant issues regarding corporate accountability, tender offer defensive tactics, and competition among SROs, among other matters. Accordingly, this release highlights certain issues raised by the proposal that commentators may wish to address. Interested persons may, of course, address any other issues they believe are relevant to the NYSE's proposal.

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[10] H.R. 2783, the Shareholder Democracy Protection Act, was introduced by Congressman John D. Dingell. Identical legislation, S. 1314, was introduced by Senators D'Amato, Metzenbaum, and Cranston. Neither proposal was reported out of committee.

[11] In reaching its conclusion not to impose listing standards relating to voting rights, the NASD relied in part on a study it commissioned from Professor Daniel R. Fischel of the University of Chicago. Fischel, *Organized Exchanges and the Regulation of Dual Class Common Stock* (March 1985) ("Fischel Study"). The major conclusions of the Fischel Study are that: (1) Exchanges have strong incentives to adopt voting rules that benefit investors; (2) no reason exists to believe that competition among exchanges on the subject of voting rules is undesirable; (3) legitimate business reasons exist for dual class common stock; (4) empirical evidence suggests that dual class common stock is desirable for certain types of firms; (5) many arguments regarding corporate democrary are based on a misconception of the corporate form of firm organization; and (6) there may be significant costs associated with prohibiting dual class common stock. *See* Fischel Study at 5–6.

[12] Letter from John J. Phelan, Jr., Chairman and Chief Executive Officer, NYSE, to John Shad, Chairman, SEC, dated September 16, 1986, at 3 ("September 16 letter").

[13] "Public shareholders" comprises the beneficial owners of the issuer's voting equity securities who are not directors, officers, or members of their immediate families of their affiliates, or affiliates of the issuer. *See* note 25, *infra*.

[14] Listed companies that have created disparate voting rights stock during the moratorium period without the required approval would have two years from the date the proposal enters into effect to comply with the rule.

[15] The approval requirements set forth in the NYSE's proposal are significantly different from the conditions recommended in the Subcommittee Report. *See* note 7, *supra*.

[16] September 16 letter, *supra* note 12, at 3.

[17] *Id.*

[18] *Id.* These initiatives include disclosure requirements under the federal securities laws, the requirement of at least two independent directors on the boards of NYSE-listed companies, and the requirement that each NYSE-listed company have an audit committee composed of independent directors. SR–NYSE–86–17, Form 19b-4 at 4–5.

[19] Seligman, *The One Share, One Vote Controversy, Report for the Investor Responsibility Research Center, Inc.* (January 1986).

[20] *See, e.g.*, Buxbaum, The Internal Division of Powers in Corporate Governance, 73 *Calif. L. Rev.* 1671 (1985) (although dual classes of stock serve some reasonable purposes, shareholder participation is important to the corporate process); Coffee, Regulating the Market for Corporate Control: A Critical Assessment of the Tender Offer's Role in Corporate Governance, 84 *Colum. L. Rev.* 1145, 1263 (1984) (dual classification of stock is a takeover defensive tactic that should be controlled); De Angelo and De Angelo, Managerial Ownership of Voting Rights, 14 *J. Fin. Econ.* 33 (1985) (the value of non-voting stock is less than that of voting stock); Dent, Dual Class Common Stock: A Reply to Professor Seligman, 54 *Geo. Wash. L. Rev.* —— (1986) (forthcoming) (in many instances the creation of dual classes of stock does not hurt shareholders); Fischel Study, *supra* note 11 (dual classes of stock serve useful purposes); Jarrell, The Stock Price Effects of NYSE Delisting for Violating Corporate Governance Rules (1984); Jog & Riding, Price Effects of Dual-Class Shares, 42 *Fin. Analysts J.* 58 (Jan.-Feb. 1986) (relationship between voting rights and share market value); Lease, McConnell & Mikkelson, The Evidence on Limited Voting Stock: Motives and Consequences, —— *Midland Corp. F.J.* —— (Summer 1986) (creation of class of stock with limited voting rights can be viable for closely-held and other corporations); Lease, McConnell & Mikkelson, The Market Value of Control in Publicly-Traded Corporations, 11 *J. Fin. Econ.* 439 (1983) (shares with superior voting rights are more highly valued by investors); Partch, The Creation of a Class of Limited Voting Common Stock and Shareholder Wealth, —— *J. of Fin. Econ.* —— (forthcoming) (no evidence that shareholders are harmed by creation of common stock with limited voting rights); Seligman, Equal Protection in Shareholder Voting Rights: The One Share, One Vote Controversy, 54 *Geo. Wash. L. Rev.* —— (1986) (forthcoming) (non-voting stock results in inefficient corporate management and is unfair to public shareholders); Address by John C. Whitehead before the 19th Annual Conference on Wall Street and the Economy at The New School for Social Research, "The Changing Face of Wall Street," February 2, 1985, at 10–15; and J. Whitehead, Don't Bend the Big Board's Rules, *Fortune*, March 18, 1985, at 185 (one share, one vote should be retained). *Cf.* Ratner, The Government of Business Corporations: Critical Reflections on the Rule of "One Share, One Vote," 56 *Cornell L. Rev.* 1 (1970) (proponent of one person, one vote standard, under which each shareholder casts one vote regardles of the size of his or her holdings).

[21] Coffee, *supra* note 20 (Commission has authority to act); Dent, *supra* note 20 (Congress should take action); Karmel, The SEC's Power to Regulate Stockholder Voting Rights, *N.Y.L.J.*, August 21, 1986, at 1 (hereinafter "Karmel August 1986 Article") (Commission has authority to act); Karmel, Is One Share, One Vote Archaic? *N.Y.L.J.*, February 26, 1985 (hereinafter "Karmel February 1985 Article") (Commission has authority to act); Ratner, *supra* note 20 (Congress should take action); Seligman, *supra* note 20 (Commission should take action); and Whitehead, *supra* note 20 (Commission should act).

A. Should the NYSE's Proposal Be Approved as Proposed, Approved Subject to Modifications, or Disapproved?

The NYSE and the Pacific Stock Exchange, Incorporated ("PSE")[22] are the only exchanges that impose a listing standard requiring that every share of common stock have equal voting rights. The NASD has no such requirement for NASDAQ quoted stocks, and the Amex's restrictions on dual classes of stock are less severe than the NYSE's.[23] In the September 16 letter the NYSE stated that the current competitive environment among SROs (*i.e.*, competition from the NASD and the Amex for listings) influenced its decision to propose a modification to its one share, one vote policy.[24]

The Commission solicits comments on the following questions:

1. Requiring the NYSE To Retain Its One Share, One Vote Policy

a. Should the NYSE be required to retain its one share, one vote policy? In this context, commentators should address whether there are any differences between NYSE-listed companies and companies listed or traded on other markets that justify requiring the NYSE to maintain its one share, one vote policy.

b. If the NYSE were required to retain its one share, one vote rule, what would the costs and benefits be to the NYSE, issuers, and investors? Commentators should address whether the NYSE will be competitively disadvantaged, as it claims, by losing listings to other markets if it is required unilaterally to maintain its one share, one vote policy. Will the lack of a one share, one vote rule at other SROs cause NYSE-listed companies to delist, or influence issuers not to list on the NYSE in the first place? In addition, commentators should address whether the NYSE derives certain benefits from being the only primary market requiring one share, one vote for all companies listed on the Exchange.

2. Adequacy of the NYSE's Proposed Standards for Allowing Dual Classes of Stock and Whether They Should Be Modified

If the NYSE proposal to permit listing of dual class stock is approved, the Commission must decide if the corporate procedures to create dual classes of stock set forth in the proposal are sufficient or should be modified. Under the proposal, listed companies may create a class or classes of stock having disparate voting rights if such securities have been approved by: (1) A majority of the independent directors of the issuer; and (2) a majority of the votes eligible to be cast by the public shareholders.

A company issuing stock with disparate voting rights at its inception or before becoming a public company would not have to obtain shareholder approval. If a company has classes of stock with disparate voting rights outstanding at the time it applies for NYSE listing, the company would have to meet the NYSE's approval requirements before being permitted to list on the NYSE.

Some of the questions arising from the NYSE's proposed standards for permitting the issuance of classes of stock having disparate voting rights are as follows:

a. Do the NYSE's approval requirements adequately protect the interests of shareholders? In this context, commentators should focus on what, if any, changes should be made to the NYSE's proposal to adequately protect investors.

b. Which shareholders should be eligible to vote and why? The NYSE proposal currently requires a vote by the majority of public shareholders. Public shareholders are defined as beneficial owners who are not directors, officers or members of their immediate families or their affiliates, or affiliates of the issuer.[25] Commentators should address the adequacy of this definition generally and, in particular, whether a stockholder holding 10 percent or more of the stock should be deemed to be a public shareholder for purposes of this requirement.[26]

c. Should more than a simple majority be required for shareholder approval and, if so, why? In this regard, we note that the NYSE's Subcommittee Report originally recommended a two-thirds majority vote.[27] Given that the proposed requirement is for a majority of all those *eligible* to vote, would a higher requirement impose disproportionate costs in seeking additional votes?

d. Should periodic reaffirmation by shareholders or independent directors of the dual class voting stock be required? If reaffirmation were required, how often should it occur? In this connection, we note that the NYSE has indicated that it considered a reaffirmation requirement and rejected it as infeasible.[28]

e. Should there be a requirement that some minimum level of voting participation for any class of common stock be retained (*e.g.*, a maximum one to ten ratio or full voting rights for certain issues)? If so, what would be a reasonable standard and why? The Commission notes that the NYSE's Subcommittee Report originally suggested a ratio of voting differential per share of no more than one to ten.[29]

f. The NYSE's proposal will permit certain companies to retain dual classes of stock with no shareholder approval required while requiring others to obtain shareholder approval within two years. Are these grandfather clauses reasonable or should they be expanded or restricted? If so, how and why?

g. What should the disclosure obligations be for companies proposing to issue classes of stock having disparate voting rights? [30] In this connection, the Commission notes a study by its Office of the Chief Economist determined that the stock of NYSE companies fell by an average of 3 percent upon announcement of a multiple class recapitalization.[31] Should this potential price effect be disclosed?

B. Should a One Share, One Vote Policy or Any Other Alternative Be Applicable to Other Securities Markets

Commentators' views on whether the NYSE's proposal should be approved or disapproved may depend, to a certain

[22] The PSE has filed with the Commission a proposed rule change to eliminate this requirement. File No. SR-PSE-84-23.

[23] The Amex currently allows a listed company to issue a class of stock that has the right to elect only a minority of the board of directors. For example, Wang Laboratories, Inc. was listed on the Amex after it created a class of stock that entitled its holders to elect 25% of the Board of Directors. The Amex's Board of Governors has approved a proposal to amend Amex's rules to end any restrictions on dual class issuances by Amex listed companies. *See* letter from Arthur Levitt, Jr., Chairman, NYSE, to John S.R. Shad, Chairman, SEC, dated November 10, 1986.

[24] September 16 letter, *supra* note 12, at 3.

[25] For purposes of the rule, the term affiliate is defined pursuant to Securities Exchagne Act Rule 12b-2 [17 CFR 240.12b-2 (1986)], which says an affiliate is a person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

[26] The NYSE has specifically raised this issue in a letter to Chairman Shad. *See* September 16 letter, *supra* note 12, at 2.

[27] *See* note 7, *supra*.

[28] September 16 letter, *supra* note 12, at 2.

[29] *See* note 7, *supra*.

[30] For example, Professor Dent suggests that the Commission could require issuers seeking approval of superior voting stock to disclose prominently whether the new stock may be sold to insiders at less than its market value; whether other shareholders may be excluded from purchasing it; or that insiders may use superior voting stock to thwart a takeover or to divert much of the control premium to themselves. Dent, *supra* note 20.

[31] Jarrell, *supra* note 20.

extent, on whether the Commission intends to impose uniform standards across all securities markets.[32] In this regard, we note that certain commentators have addressed the question of whether the Commission should not only disapprove the NYSE's proposal but also require all exchanges and the NASD to adopt a one share, one vote policy.[33] Others believe that it is more appropriate for Congress to address this issue and enact legislation.[34] Accordingly, commentators may wish to address the following issues:

1. Should a uniform one share, one vote policy be applied across all securities markets? Specifically, should all NYSE- and Amex-listed common stocks, and NASDAQ-quoted common stocks be subject to the same voting rights policy?

2. Even if a uniform policy is developed, should certain types of companies or situations uniformly be exempted from such a policy? For example, should there be an exemption to a one share, one vote rule for: (a) As the NYSE proposal permits, companies that had disparate voting rights at the time the company first became publicly owned; (b) companies that in connection with providing venture capital to small or medium size businesses, acquire control of those businesses; (c) growth or unseasoned companies; and (d) stock issued in connection with a merger the pay out of which is related to the underlying company (*e.g.*, GM classes E and H)?

3. Should a distinction be made between disenfranchisement situations and cases where a purchaser never expects to have equal voting rights. For example, should recapitalizations be permitted where management, or a small group of shareholders ("control group"), have exercised voting control over a corporation since it has become a public corporation? If such a distinction is appropriate, should it be extended to other analogous cases where the control group has held voting control for a substantial period of time?

4. If a uniform policy should be developed, should the Commission or Congress mandate such a policy?

[32] Section 19(c) [15 U.S.C. 78s(c)] of the Exchange Act empowers the Commission to amend or rescind the rules of an SRO.

[33] *See* Coffee, *supra* note 20; Fischel, *supra* note 11; Karmel February 1985 and August 1986 Articles, supra note 21; Seligman, *supra* note 20; and Whitehead, *supra* note 20.

[34] Dent, *supra* note 20. *See* Ratner, *supra* note 20.

C. Further Issues With Respect to the NYSE's Proposal

1. Certain institutional investor interest groups have implied that investment decisions of institutional investors will be affected by the nature of the voting rights associated with common stock. The Commission would be interested in receiving further information on this claim and data on its potential effect on the marketplace.

2. The Commission is interested in any state law implications arising from either approving the NYSE's proposal or requiring all exchanges and the NASD to adopt a one share, one vote policy.

* * * * *

The Commission also welcomes comments on any issues raised by the proposal that are not set forth above. The public hearings are scheduled to begin Tuesday, December 16, 1986, in Room 1C30 of the Commission's headquarters, 450 Fifth Street, NW., Washington, DC. The hearings will run from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m. on both December 16 and 17. Although every attempt will be made to allow all interested persons to appear, time may not allow it. Therefore, panels made up of representative groups, such as public companies, institutional investors, shareholders, SROs, academicians, and state regulatory bodies, may be formed. The schedule of appearances will be announced before the hearings begin. People selected to appear at the hearings should submit an original and ten copies of the text of prepared statements not later than December 12, 1986. All participants are invited at the time of their appearance to make copies of their statements available to persons attending the hearings.

Dated: November 13, 1986.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-26049 Filed 11-17-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 21 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies

Copies of forms, request for clearance (S.F. 83), suporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-6623

OMB Reviewer: Patricia Aronsson, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7231

Title: Nomination for the Small Business Contractor and Subcontractor of the Year Award

Form Nos.: SBA 883, SBA 1365

Frequency: Annually

Description of Respondents: Federal agencies and prime contractors nominate their prime contractors and subcontractors, by use of these forms, whose performance records serve as outstanding examples of the competence and expertise of small business. The Small Business Prime Contractor and Subcontractor of the Year are chosen from these nominations.

Annual Responses: 327

Annual Burden Hours: 1,308

Type of Request: Extension

Elizabeth M. Zaic,

Deputy Director, Office of Administrative Services, Small Business Administration.

[FR Doc. 86-25976 Filed 11-17-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 44485]

Baltimore-London Service Case; Assignment of Proceeding

This proceeding has been asigned to Administrative Law Judge Ronnie A. Yoder. Future communications with respect to this proceeding should be addressed to him at U.S. Department of

Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg., 400 7th Street, SW., Washington., DC 20590, telephone (202) 366-2142.

Dated at Washington, DC, November 12, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86-26011 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

[BS-Ap.-No. 2601]

Burlington Northern Railroad Co., Norfolk and Western Railway Co., and Chillicothe Southern Railroad Co.; Postponement of Public Hearing

The public hearing scheduled for November 20, 1986, in Chillicothe, Missouri, concerning the captioned block signal application, has been postponed indefinitely.

The postponement is being made at the request of one of the applicants for the signal discontinuance, the Burlington Northern Railroad Company.

In the application that will be the subject of this hearing, the Burlington Northern Railroad Company, the Norfolk and Western Railway Company, and Chillicothe Southern Railroad Company, have petitioned the Federal Railroad Administration (FRA) for approval of the proposed discontinuance of the traffic control signal system from Brookfield, Missouri, to Maxwell, Missouri, on the Burlington Northern Railroad, including the modification of Sumner Interlocking, where the Chillicothe Southern Railroad crosses at grade the Burlington Northern Railroad, and modification of the Norfolk and Western Railway Company junction at Maxwell. This proceeding is identified as FRA Block Signal Application No. 2601. (See the original hearing notice published October 6, 1986, at 51 FR 35577.)

FRA regrets any inconvenience caused by the postponement of this hearing.

Issued in Washington, DC, on November 14, 1986.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-26113 Filed 11-14-86; 4:50 pm]

BILLING CODE 4910-06-M

Maritime Administration

[Docket S-795]

United States Lines, Inc.; Application for Waiver Pursuant to Section 804 of the Merchant Marine Act, 1936, as Amended

By order served December 3, 1984 (approved November 30, 1984—Docket S-760), the Maritime Administrator waived the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1222) (Act) to allow United States Lines, Inc. (USL) to enter into certain foreign flag vessel charters and space charters. The foreign-flag vessels serve as feeders in support of USL's non-subsidized Jumbo Econship container vessels which operate in Round-the-World service eastbound. The waiver specified the ports to be served, the number of vessels to be operated in each port range, and the maximum FEU capacity per vessel.

The waiver was granted for a period of two years through December 31, 1986, subject to the provision that USL would be required to file by October 1, 1986, a detailed feasibility study regarding the factors necessitating any extension of the waiver beyond December 31, 1986, including the feasibility of operating the feeder service with unemployed U.S.-flag vessels, including any USL might have available; purchase of foreign-flag vessels for reflagging under the U.S.-flag; and joint arrangements with U.S.-flag operators in the trade.

By application dated September 30, 1986, USL requests that the Maritime Administrator renew its present waiver permitting the chartering of foreign flag feeder vessels or the chartering of space aboard such vessels, in order to support the continued operation of USL's 12 U.S.-flag Jumbo Econships in Round-the-World service. USL specifically seeks renewed waiver of the provisions of section 804(a) of the Act, as well as the comparable provisions appearing in USL's operating-differential subsidy contract, for a period of five years, beginning January 1, 1987.

USL advises that since approval of USL's present section 804 waiver in November 1984, USL has carefully examined all alternative means for feeding cargo to and from its Round-the-World service. USL also advises that it has retained the services of chartering consultants and the economic consulting firm of Temple, Barker & Sloane, Inc. to assist it in analyzing the various options. The detailed investigation was conducted pursuant to the terms of the Maritime Administrator's order granting USL's present waiver. USL indicates that no viable U.S.-flag feeder alternatives were found, as stated in the affidavits and reports that accompany its application, but the present request reflects a significant reduction in the geographic scope of the necessary waiver and the number of foreign-flag feeder vessels to be chartered by USL.

USL's specific renewal request encompasses the following vessel and space charter arrangements:

Line haul port	Feeder ports	Number of vessels	Maximum FEU capacity per vessel
Khor Fakkan	A UAE Port, AD Damman, Kuwait, Bahrain, Muscat [1].	2	275
Khor Fakkan or Singapore.	Muscat,[1] Cochin, Bombay, Karachi.	2	225
Singapore	Colombo, Madras, Calcutta, Chalna, Chittagong, Port Kelang [2].	3	225
Kaohsiung	Philippine Islands	1	[3] 90

[1] Muscat will be served by the Arabian Gulf feeders or, alternatively, the west coast of India feeders, but not at the same time.

[2] Port Kelang capacity will not exceed an average of 55 FEUs per week; this capacity may be provided either by chartered feeders or by space charter arrangements.

[3] Alternatively, this capacity may be provided by space charter arrangements.

USL's application and supporting materials may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on December 2, 1986. This notice is published as a matter of discretion. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: November 13, 1986.

James E. Saari,

Secretary.

[FR Doc. 86-25983 Filed 11-17-86; 8:45 am]

BILLING CODE 4910-81-M

Research and Special Programs Administration

Technical Pipeline Safety Standards Committee/Technical Hazardous Liquid Pipeline Safety Standards Committee; Joint Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1), notice is hereby given of a joint meeting of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee on December 4, 1986, at 9:00 a.m. in Room 3442 Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The purpose of the meeting is to present information and data to enable the Advisory Committee to assist and advise the Administrator of the Research and Special Programs Administration (RSPA) in the evaluation of issues raised and recommendations made by Congressional Committees relating to RSPA's pipeline safety program.

Attendance is open to the public, but limited to the space available. With approval of the Executive Director of the Committees, members of the public may present oral statements on the subject. Due to the limited time available, each person who wants to make an oral statement is requested to notify Linda Craver, Room 8409, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, telephone 202–366–1640, of the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any session of the meeting.

Dated: November 13, 1986.

Richard L. Beam,

Associate Director for Regulation, Office of Pipeline Safety.

[FR Doc. 86–25954 Filed 11–17–86; 8:45 am]

BILLING CODE 4910–60–M

Urban Mass Transportation Administration

New Jersey Transit; Sections 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (MTA), DOT.

ACTION: Notice.

SUMMARY: Pub. L. 99–500 signed into law by President Reagan on October 18, 1986, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the Federal Register each time to a grant is obligated pursuant to Sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Divison, (202) 366–2053, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to Pub. L. 99–500, UMTA reports the following grant information:

Transit property	Grant No.	Grant amount	Date obligated
UMTA Section 3 grants:			
New Jersey Transit	NJ–03–0063	$20,000,001	Oct. 28, 1986.
UMTA section 9 grants:			
None			

Issued on Novembeer 13, 1986.

Ralph L. Stanley,

Administrator.

[FR Doc. 86–26012 Filed 11–17–86; 8:45 am]

BILLING CODE 4910–57–M

UNITED STATES INFORMATION AGENCY

Fulbright Teacher Exchange Program

The United States Information Agency seeks to secure the services of two institutions of higher education to coordinate and implement orientation/workshop programs in the United States for the Fulbright Teacher Exchange Program. The Fulbright Teacher Exchange Program provides opportunities for U.S. teachers to exchange teaching positions with foreign counterpart teachers for an academic year.

Universities or colleges in metropolitan Washington, DC., with schools or colleges of education or graduate programs in international studies, and located within reasonable proximity of Washington, DC's international gateway airports, are invited to submit project proposals for grants. For application information, please contact Mr. David N. Levin no later than December 10, 1986, at the following address: Teacher Exchange Branch (E/ASX), Office of Academic Programs, United States Information Agency, 301 Fourth Street, SW., Washington, DC, 20547. Phone: (202) 485–2555.

Dated: November 13, 1986.

Charles N. Canestro

Federal Register Liaison.

[FR Doc. 86–25978 Filed 11–17–86; 8:45 am]

BILLING CODE 8230–01–M

[Delegation Order No. 86–6]

Director, Office of Contracts; Designation as Senior Procurement Executive

Pursuant to the authority vested in me as Director of the United States Information Agency by Reorganization Plan No. 2 of 1977; by the Federal Property and Administrative Services Act of 1949, as amended, (41 U.S.C. 251, *et seq.*); the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 401, *et seq.*); and other Federal statutes; and by Executive Orders 12048 of March 27, 1978, and 12352 of March 17, 1982, the Director of the Office of Contracts of the Bureau of Management, is hereby designated the Senior Procurement Executive in accordance with the provisions of 41 U.S.C. 414(3) and, further, is hereby delegated the authority:

1. To acquire personal property, services (including construction) and real property by contract and, in addition, to make grants (which shall hereafter be deemed to include grants-in-aid) and cooperative agreements;

2. To ensure that Agency operations for contracts, grants and cooperative agreements are conducted in an efficient manner, consistent with applicable provisions of law, Executive Order and regulation;

3. To redelegate any authority granted hereunder to the extent permitted by law, Executive Order, regulation or this Order;

4. To issue regulations, procedures and directives in the Manual of Operations and Administration regulating contracts, grants and cooperative agreements;

5. To develop, in cooperation with the

Department of State and with the International Development Cooperation Agency or the Agency for International Development, uniform or joint regulations governing contracts, grants and cooperative agreements made in foreign countries;

6. To determine sources, to solicit and to evaluate bids and offers, and to conduct all negotiations for the acquisition of personal property, services (including construction) and real property on behalf of the Agency, and to designate other Agency representatives to participate in specific negotiations of Agency contracts;

7. To ensure in all negotiations the full and proper participation of representatives of the General Counsel, affected offices and elements, which participation shall be considered necessary in all negotiations of consequences, unless it is obvious to all concerned that such participation is not needed;

8. To determine recipients of grants and cooperative agreements, to conduct discussions with proposed recipients of grants and cooperative agreements, and to designate the Agency participants in such discussions, except that the Senior Procurement Executive may not limit the existing power of the Board of Foreign Scholarships to select recipients of grants;

9. To designate and to define the authority of such Agency personnel as may be necessary to administer a contract, cooperative agreement, or grant, and to require any officer so designated to maintain appropriate records and to submit reports required by the Senior Procurement Executive;

10. To prescribe records and reports which must be maintained as documentation of contract, cooperative agreement, or grant activities;

11. To develop effective Agency-wide procurement systems which will enhance competition, eliminate unnecessary regulations and paperwork, establish procedures to ensure that contractors receive timely payment and establish clear lines of procurement authority and accountability;

12. To establish career development programs resulting in a highly qualified, professional procurement work force;

13. To certify to the Director that the procurement systems meet approved criteria;

14. To obtain the advice and clearance of the General Counsel with respect to the form and legal sufficiency of documents pertaining to contracts, cooperative agreements or grants in accordance with applicable laws and regulations, including regulations set forth in the Manual of Operations and Administration;

15. Without power of redelegation:

(a) To authorize a cost or cost-plus-a-fixed-fee contract or an incentive-type contract, either within or outside the United States, its territories and possessions, based upon the determination made pursuant to 41 U.S.C. 254 (b);

(b) To authorize advance payments, based upon determinations made pursuant to 41 U.S.C. 255 (c);

(c) To make determinations that only specified makes and models of technical equipment and parts will satisfy the Agency's needs to standardize for additional units or replacement parts pursuant to Subpart 6.302–1(b)(4) of the federal Acquisition Regulation;

(d) to serve as the Agency source selection authority pursuant to Subpart 15.6 of the Federal Acquisition Regulation;

(e) to make determinations with respect to mistakes in bids alleged or disclosed before or after award of contract pursuant to Parts 14.406 and 15.607 of the Federal Acquisition Regulation;

(f) to make the determination to enter into full and open competition after exclusion of sources pursuant to the authority of 41 U.S.C. 253 (b);

(g) to approve justifications for use of less than full and open competition as authorized at 41 U.S.C. 253 (c)(1) through (c)(6) when the contract amount exceeds $10,000,000;

(g) except with respect to the acquisition of property or services of any kind and description from or through international organizations; foreign governments; agencies, subdivisions of agencies, or other entities of foreign governments, to approve deviations from clauses, provisions, forms, policies, procedures, or limitations prescribed in the Federal Acquisition Regulation when, in the judgment of the Senior Procurement Executive, such deviations are necessary for the effective performance of Agency operations, provided that:

(1) each proposed deviation is cleared by the General Counsel;

(2) a record is maintained of each deviation, disclosing the nature of the deviation and the reason therefor; and

(3) a copy of all deviations shall be furnished to the FAR Secretariat in accordance with Part 1.4 of the Federal Acquisition Regulation;

16. In the absence of a specific delegation of authority from the Director or redelegation of authority from the Senior Procurement Executive, no officer or employee of the Agency shall be authorized, on behalf of the Agency, to solicit bids or offers; to negotiate contracts, grants or cooperative agreements; to enter into contracts, grants or cooperative agreements; to make findings and determinations; to amend or to administer any contract, grant or cooperative agreement or to make commitments with respect thereto. The authorities hereby delegated shall be exercised in accordance with all applicable provisions of law and subject to all applicable regulations, directives or instructions which are now in effect or may hereafter be issued by the United States Information Agency, or by any other Government agency of competent jurisdiction, governing the acquisition of personal property, services (including construction) and real property, cooperative agreements or grants. For purposes of this Order, the term contract shall include any acquisition by purchase, lease or barter. This authority is plenary and carries the full delegable authority of the Director insofar as permitted by law;

17. Copies of any redelegation made by the Senior Procurement Executive will be sent to the Office of Comptroller;

18. In the event of a vacancy in the position of the Director of the Office of Contracts, or in the event of his or her absence or illness, the authorities and functions delegated herein may be exercised by the Acting Director of the Office of Contracts;

19. Notwithstanding any other provision of this Order, the Director of the Agency may at any time exercise any function or authority delegated herein.

This Order is effective as of the date of its execution and supersedes all prior Delegation Orders, in particular Delegation Orders Nos. 78–5, 79–1, 85–7 (insofar as it affects the Director of the Office of Contracts) and 86–1.

Dated: October 29, 1986.

Charles Z. Wick,

Director, United States Information Agency.

[FR Doc. 86–25933 Filed 11–17–86; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 51, No. 222

Tuesday, November 18, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY CREDIT CORPORATION

TIME AND DATE: 2:00 p.m., November 19, 1986.

PLACE: Room 104A-Administration Building, U.S. Department of Agriculture, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Minutes of Special Meeting on September 6, 1985.
2. Docket re Conservation Reserve Program, BCA–322.
3. Memorandum re Target Export Assistance—Foreign Market Development Projects for Fiscal Year 1987.
4. Memorandum re Emergency FCIC Funding Request.
5. Docket re Milk Price Support Program, XCP–98a, Advisory Memo No. 1.
6. Docket re Milk Price Support Program, XCP–98a, Advisory Memo No. 2.
7. Docket re Operating Provisions for the Special Producer Storage Loan Program, ACY–321.
8. Resolution re 1981 Uniform Grain Storage Agreement (UGSA), WCP–154a, Amend. 1.
9. Resolution re 1981 Uniform Grain Storage Agreement (UGSA), WCP–154a, Amend. 2.
10. Memorandum re Retendering of $90 Million African Assistance Sales Program.
11. Memorandum re Fiscal Year 1987 Section 416 Commodity Determination and Recent Program Summary.
12. Sale of Raw Sugar to the Peoples' Republic of China.
13. Resolution re Ratification of Targeted Export Assistance—Foreign Market Development Projects for Fiscal Year 1986.
14. Resolution re Ratification of Foreign Donation of Dairy Products & Wheat Pursuant to Section 416(b) of the Agricultural Act of 1949, as Amended, During Fiscal Year 1985.
15. Resolution re Ratification of Foreign Donation of Dairy Products & Wheat Pursuant to Section 416(b) of the Agricultural Act of 1949, as Amended, During Fiscal Year 1986.
16. Resolution re Ratification of Commodities Available for Pub. L. 480 During Fiscal Year 1986, CZ–266, Resolution No. 23.
17. Resolution re Ratification of Commodities Available for Pub. L. 480 During Fiscal Year 1986, CZ–266, Resolution No. 23, Amendment 1.
18. Resolution re Ratification of Commodities Available for Pub. L. 480 During Fiscal Year 1986, CZ–266, Resolution No. 23, Amendment 2.
19. Resolution re Ratification of Commodities Available for Pub. L. 480 During Fiscal Year 1986, CZ–266, Resolution No. 24.
20. Resolution re Ratification of Repurchase of CCC Guarantee Obligations on Credit Extended To Chile, Jamaica, Morocco, and Panama.

CONTACT PERSON FOR MORE INFORMATION: Jerry M. Barron, Acting Secretary, Commodity Credit Corporation, Room 3077 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 447–4208.

Jerry M. Barron,

Acting Secretary, Commodity Credit Corporation.

[FR Doc. 86–26069 Filed 11–14–86; 12:57 pm]

BILLING CODE 3110–05–M

FEDERAL ENERGY REGULATORY COMMISSION

November 12, 1986.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

TIME AND DATE: November 19, 1986, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a List of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of Public Information.

Consent Power Agenda, 845th Meeting—November 19, 1986, Regular Meeting (10:00 a.m.)

CAP–1.
Project No. 8823–002, city of New York

CAP–2.
Project No. 2548–010, Georgia-Pacific Corporation

CAP–3.
Project No. 10065–001, Gem Irrigation District

CAP–4.
Project No. 9872–001, Joe A. Brady

CAP–5.
Project No. 7037–003, Okanogan Public Utility District

CAP–6.
Project No. 2890–017, Kings River Conservation District

CAP–7.
Project No. 8745–001, Twin Lakes Canal Company

CAP–8.
Project No. 2427–004, Woods Falls B. Hydro, Inc.
Project No. 8763–002, Power Mining, Inc.

CAP–9.
Omitted

CAP–10.
Omitted

CAP–11.
Docket Nos. EF81–2011–005, EF81–2011–006, EF82–2011–005 and EF82–2011–006, United States Department of Energy—Bonneville Power Administration

CAP–12.
Docket No. ER86–643–001, Arkansas Power and Light Company

CAP–13.
Docket No. ER86–559–002, Unitil Power Corporation

CAP–14.
Docket Nos. ER86–638–003 and ER86–638–004, El Paso Electric Company

CAP–15.
Docket No. ER86–405–003, Boston Edison Company

CAP–16.
Docket No. ER86–560–001, Southern Company Services, Inc.

CAP–17.
Docket No. ER86–721–000, Central Power & Light Company

CAP–18.
Docket No. ER87–3–000, Boston Edison Company

CAP–19.
Docket No. ER86–720–000, Maine Public Service Company

CAP–20.
Docket No. ER85–521–004, Kansas Gas and Electric Company

CAP–21.
Docket No. EC86–22–000, Northern States Power Company (Wisconsin) and Lake Superior District Power Company

CAP–22.
Docket No. EL84–23–000, Frank A. McDermott, Jr.

CAP–10.
Docket No. QF86–1003–000, Bangor-Paific Hydro Associates

Consent Miscellaneous Agenda

CAM–1.
Docket No. RM83–57–001, payments for benefits from headwater improvements

CAM–2.
Docket No. IS83–26–000, IS83–26–007 and IS84–14–000, Gulf Central Pipeline Company

CAM–3.
Docket No. RM79–76–233 (West Virginia—5), high-cost gas produced from tight formations

CAM–4.
Docket No. RM79–76–250, high-cost gas produced from tight formations
CAM–5.
Docket No. GP80–41–035, United Gas Pipeline Company
CAM–6.
Docket No. GP82–6–000, Pennsylvania Department of Environmental Resources, J&J Enterprises, Inc., Section 103 NGPA Determination, Student Cooperative Association, Inc. #3 well, FERC No. JD80–16246
CAM–7.
Docket No. GP86–17–000, Texaco Inc.
CAM–8.
Docket No. GP86–22–000, Williston Basin Interstate Pipeline Company v. Arco Oil and Gas Company
Docket No. SA86–15–000, Williston Basin Interstate Pipeline Company
CAM–9.
Docket No. SA85–32–001, Inland Ocean, Inc.
CAM–10.
Docket No. RA85–6–001, Utex Oil Company
CAM–11.
Docket No. RA83–6–000, Champlin Petroleum Company
CAM–12.
Docket No. RA83–8–000, Asamera Oil (U.S.) Inc.
CAM–13.
Docket No. RO86–20–000, C&H Refinery, Inc.
CAM–14.
Docket No. GP86–48–000, Beartooth Oil & Gas Company, Federal No. 5–15 well, FERC JD No. 85–29076
CAM–15.
Docket No. RO85–14–000, Holly Corporation and Holly Energy, Inc.
CAM–16.
Docket No. RO86–5–000, Apex Oil Company and Clark Oil & Refining Corporation

Consent Gas Agenda

CAG–1.
Omitted
CAG–2.
Omitted
CAG–3.
Docket Nos. RP86–161–000, 001 and CP86–596–000, MIGC, Inc.
CAG–4.
Omitted
CAG–5.
Omitted
CAG–6.
Omitted
CAG–7.
Docket Nos. TA87–1–23–000 and 001 (PGA87–1 and IPR87–1), Eastern Shore Natural Gas Company
CAG–8.
Docket Nos. TA87–1–45–000, 001 and 002, Inter-City Minnesota Pipelines Ltd., Inc.
CAG–9.
Docket No. RP86–96–002, Trailblazer Pipeline Company
Docket No. RP86–95–001, Canyon Creek Compression Company
Docket No. RP86–82–001, Wyoming Interstate Company Ltd.
CAG–10.
Docket No. RP86–97–004, Natural Gas Pipeline Company of America
CAG–11.
Docket No. RP86–117–001 Gas Research Institute
CAG–12.
Docket Nos. RP86–150–001 and 002, El Paso Natural Gas Company
CAG–13.
Docket No. RP86–155–003, Northwest Central Pipeline Corporation
CAG–14.
Docket Nos. RP86–158–002 and CP86–526–001, United Gas Pipe Line Company
CAG–15.
Docket Nos. TA87–1–35–000 and 003, West Texas Gas, Inc.
CAG–16.
Docket No. RP86–93–001, United Gas Pipe Line Company
CAG–17.
Docket No. RP86–127–001, Colorado Interstate Gas Company
CAG–18.
Docket No. TA86–1–40–002, Raton Gas Transmission Company
CAG–19.
Docket Nos. RP86–84–000 and 001, Florida Gas Transmission Company
CAG–20.
Docket No. TA86–4–11–000, United Gas Pipe Line Company
CAG–21.
Docket No. ST86–1562–001, Cranberry Pipeline Corporation
CAG–22.
Docket No. ST81–105–003, Producer's Gas Company
CAG–23.
Docket Nos. CI86–278–001 and CI86–296–001, Transcontinental Gas Pipe Line Corporation and Transco Gas Supply Company
CAG–24.
Docket Nos. RI74–188–088 and RI75–21–083, Independent Oil & Gas Association of West Virginia
CAG–25.
Docket No. CI86–403–000, Sonat Exploration Company
CAG–26.
Docket Nos. CP85–826–001, CP86–95–002 and CP86–96–002, National Fuel Gas Supply Corporation
Docket Nos. CP86–414–004, CP86–437–002, CP86–556–001 and CP86–557–003, National Gas Pipeline Company of America
Docket No. CP86–294–004, Northern Natural Gas Company, Division of Enron Corporation
CAG–27.
Docket No. CP86–375–001, Natural Gas Pipe Line Company of America
Docket No. CP86–679–002, Interstate Power Company
CAG–28.
Docket No. CP86–465–001, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG–29.
Docket No. CP86–517,000 Northern Natural Gas Company, Divison of Enron Corporation
CAG–30.
Docket No. CP86–636–001, Pacific Gas Transmission Company
CAG–31.
Docket No. CP86–301–001, Panhandle Eastern Pipe Line Company
CAG–32.
Docket Nos. CP86–389–001 and 002, Transcontinental Gas Pipe Line Corporation
CAG–33.
Docket No. CP85–186–004, Valero Interstate Transmission Company
Docket Nos. CI85–206–002, CI85–207–002 and CI85–213–002, Shell Western E&P, Inc.
CAG–34.
Omitted
CAG–35.
Docket No. CP85–912–002, Colorado Interstate Gas Company
CAG–36.
Docket No. CP86–210–001, Southern Natural Gas Company
CAG–37.
Docket No. CP86–505–000, East Tennessee Natural Gas Company
CAG–38.
Docket No. CP86–540–000 Natural Gas Pipeline Company of America
CAG–39.
Docket No. CP86–654–000, Southern Natural Gas Company
CAG–40.
Docket No. CP85–920–000, Northwest Pipeline Corporation
CAG–41.
Docket No. CP86–140–000, Texas Gas Transmission Corporation
CAG–42.
Docket No. CP86–143–000, Texas Gas Transmission Corporation
CAG–43.
Docket No. CP86–496–000, Phillips Gas Pipeline Company

I. Licensed Project Matters

P–1.
Project No. 9552–000, Deferiet Corporation
P–2.
Project No. 9554–000, Colton Hydro Corporation
P–3.
Project No. 9555–000, Higley Corporation
P–4.
Project No. 9563–000, Herrings Hydro Corporation
P–5.
Project No. 9567–000, Hannawa Corporation
P–6.
Project No. 9556–000, Kamargo Corporation
Project No. 9557–000, Black River Hydro Corporation
Project No. 9564–000, Norwood Hydro Corporation
Project No. 9565–000, Raymondville Hydro Corporation
Project No. 9566–000, East Norfold Hydro Corporation
Project No. 9553–000, School Street Hydro Corporation
Project Nos. 2569–000, 2330–000 and 2539–000, Niagara Mohawk Power Corporation
P–7.
Project No. 9558–000, Carry Falls Corporation
P–8.

Project No. 9231–001, Scott Paper Company
P–9.
Project No. EL84–11–000, Aquenergy Systems, Inc.

II. Electric Rate Matters

ER–1.
Docket No. ER86–558–003, 004 and 005, Gulf States Utilities Company
ER–2.
Docket No. ER82–410–000, New York State Electric and Gas Corporation
ER–3.
Docket No. EL82–20–000, Town of Highlands, N.C. v. Nantahala Power & Light Company
ER–4.
Docket No. EL86–53–000, Southern Company Services, Inc.
Docket No. EL86–57–000, Gulf States Utilities Company v. Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Company Services, Inc.
ER–5.
Docket Nos. QF86–686–000 and EL87–2–000, Martin Marietta Aluminum Properties, Inc.
ER–6.
Docket No. QF86–965–000, Caribbean Energy Company, Inc.

Miscellaneous Agenda

M–1.
Docket No. RM86–17–000, statements and reports (schedules), Form EIA–767, Steam-Electric Plant Operation and Design Report and FERC Form No. 549–ST, form of self-implementing transportation reports
M–2.
Reserved
M–3.
Reserved
M–4.
Docket No. RM86–15–000, computerized rate filing option by natural gas pipeline companies
M–5.
Docket Nos. GP86–58–000 and 001, State of Louisiana, Department of Natural Resources, section 102 determination, Forman Petroleum Coropration, LL&E No. 2 well, FERC JD No. 86–28332, section 103 determination, Forman Petroleum Corporation, LL&E No. 2 well, FERC JD No. 86–11240

I. Pipeline Rate Matters

RP–1.
Docket Nos. RP82–80–000 and CP82–542–000, ANR Pipeline Company

II. Producer Matters

CI–1.
Reserved

II. Pipeline Certificate Matters

CP–1.
Omitted
CP–2.
Omitted
CP–3.
Omitted
CP–4.
Omitted
CP–5.
Omitted
CP–6.
Docket Nos. TC80–31–000, TC81–16–000 and TC86–7–000, KN Energy, Inc.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–26015 Filed 11–13–86; 4:29 pm]

BILLING CODE 6717–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 13, 1986.

TIME AND DATE: 10:00 a.m., Thursday, November 20, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Comments received regarding the revision of Procedural Rule 44, 29 CFR 2700.44.

It was determined by a unanimous vote of Commissioners that this meeting be closed.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86–26027 Filed 11–14–86; 10:06 am]

BILLING CODE 6735–01–M

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, November 19, 1986.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Consideration of staff recommendation concerning proposed rulemaking on mobile home sales and service.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326–2179, Recorded Message: (202) 326–2711.

Emily H. Rock.

Secretary.

[FR Doc. 86–26028 Filed 11–14–86; 10:08 am]

BILLING CODE 6750–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, November 25, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Safety Study:* Crashworthiness of Large Poststandard Schoolbuses.

FOR MORE INFORMATION, CONTACT: Ray Smith (202) 382–6525.

Ray Smith,

Federal Register Liaison Officer.

November 14, 1986.

[FR Doc. 86–26096 Filed 11–14–3:44 pm]

BILLING CODE 7533–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board Meeting

TIME & DATE: 2:30 p.m., Monday, November 24, 1986.

PLACE: Federal Reserve Bank of Richmond, 701 East Byrd Street, Richmond, Virginia 2361.

STATUS: Open.

CONTRACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Director of Communications, 376–2623.

AGENDA:

I. Call to Order and Remarks of Acting Chairman
II. Approval of Minutes, August 26, 1986
III. Executive Director's Activity Report
IV. Personnel Committee Report
—Recommendation of Officers' Performance Awards
V. Budget Committee Report
—Recommendation of FY 1987 Budget Adjustments
VI. Treasurer's Report
VII. Resolution: Ninth Annual Meeting
VIII. Resolution: Regular Meetings of the Board

Carol J. McCabe,

Secretary.

[FR Doc. 86–26035 Filed 11–14–86; 10:09 am]

BILLING CODE 7570–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 17, 1986:

A closed meeting will be held on Tuesday, November 18, 1986, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17

CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 18, 1986, at 10:00 a.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive action.
Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272–2467.

Jonathan G. Katz,
Secretary.
November 13, 1986.

[FR Doc. 86–26100 Filed 11–14–86; 4:02 pm]
BILLING CODE 8010–01–M

Federal Register

Tuesday
November 18, 1986

Part II

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

November 1, 1986.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of November 1, 1986, of 21 deferrals contained in the first special message of FY 1987. This message was transmitted to the Congress on September 26, 1986.

Rescissions (Table A and Attachment A)

As of November 1, 1986, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of November 1, 1986, $1,764.5 million in 1987 budget authority was being deferred from obligation and $5.7 million in 1987 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1987.

Information From Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below:

Vol. 51, FR p. 35976, Tuesday, October 7, 1986

James C. Miller III,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1987 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	0

****

TABLE B

STATUS OF 1987 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	1,835.6
Routine Executive releases through November 1, 1986 (OMB/Agency releases of $65.4 million and cumulative adjustments of $ 0 million)	-65.4
Overturned by the Congress	0
Currently before the Congress	1,770.2 a/

a/ This amount includes $5.7 million in outlays for a Department of the Treasury deferral (D87-21).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1987

As of November 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1987

As of November 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 11-1-86
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D87-1	95,000		9-26-86					95,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D87-2	111,202		9-26-86					111,202
Timber salvage sales	D87-3	29,731		9-26-86					29,731
Cooperative work	D87-4	526,938		9-26-86					526,938
Gifts, donations, and bequests for forest and rangeland research	D87-5	200		9-26-86					200
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense	D87-6	2,350		9-26-86					2,350
Family Housing									
Family housing, Defense	D87-7	76,943		9-26-86	65,143				11,800
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation	D87-8	1,065		9-26-86					1,065
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	D87-9	165		9-26-86					165
Southwestern Power Administration, Operation and maintenance	D87-10	7,554		9-26-86					7,554

Attachment B - Status of Deferrals - Fiscal Year 1987

As of November 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 11-1-86
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program).....	D87-11	2,900		9-26-86					2,900
Social Security Administration Limitation on administrative expenses (construction).....	D87-12	7,073		9-26-86					7,073
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund.....	D87-13	70,000		9-26-86					70,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, executive.....	D87-14	6,100		9-26-86					6,100
Other Assistance for implementation of a Contadora agreement.....	D87-15	2,000		9-26-86					2,000
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund).....	D87-16	803,877		9-26-86					803,877
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing Local government fiscal assistance trust fund.....	D87-17	74,149		9-26-86					74,149
Local government fiscal assistance trust fund.....	D87-21	5,981		9-26-86	257				5,724
OTHER INDEPENDENT AGENCIES									
Commission on the Ukraine Famine Salaries and expenses.....	D87-18	100		9-26-86					100
Office of the Federal Inspector for the Alaska Natural Gas Transportation System, Salaries and expenses.....	D87-19	411		9-26-86					411
Pennsylvania Avenue Development Corporation Land acquisition and development fund.....	D87-20	11,873		9-26-86					11,873
TOTAL, DEFERRALS.....		1,835,613	0		65,400	0		0	1,770,213

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D87-21) of outlays only.

[FR Doc. 86-25931 Filed 11-17-86; 8:45 am]
BILLING CODE 3110-01-C

Federal Register

Tuesday
November 18, 1986

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816, and 817

Surface Coal Mining and Reclamation Operations—Permanent Regulatory Program; Removal of Adverse Physical Impact Definition and Certain Remining Operations Performance Standards; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816, and 817

Surface Coal Mining and Reclamation Operations—Permanent Regulatory Program; Removal of Adverse Physical Impact Definition and Certain Remining Operations Performance Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is removing from its rules the definition of adverse physical impact, and certain performance standards pertaining to remining operations. The effect of these changes is to require all persons conducting remining operations on previously mined areas to use all reasonably available spoil in the immediate vicinity of the operation to backfill the highwall to the maximum extent technically practical.

EFFECTIVE DATE: December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Raymond Aufmuth, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–5843.

SUPPLEMENTARY INFORMATION:

I. Background

On January 7, 1982 (47 FR 928), and June 25, 1982 (47 FR 27734), the Office of Surface Mining Reclamation and Enforcement (OSMRE) proposed permit and performance standards for remining previously mined areas. The January 7, 1982, proposal included a requirement to reclaim highwalls affected by remining, while the June 25, 1982, proposal provided additional standards applicable to remining and reprocessing operations. On November 12, 1982 (47 FR 51316), OSMRE issued an interim final rule applicable to remining of steep slope areas. That interim final rule, as well as other aspects of the June 25, 1982, proposal, were considered in OSMRE's "Final Environmental Impact Statement, OSM–EIS–1: Supplement" on the permanent program regulations.

In a final rule promulgated on September 16, 1983 (48 FR 41720), OSMRE revised portions of its regulations at 30 CFR 816.106 and 817.106 on performance standards applicable to remining operations. Under the revised rule at 30 CFR 816.106(b) and 817.106(b), remining operations with no adverse physical impact on a pre-existing highwall were excepted from the requirement to use all reasonably available spoil in the immediate vicinity of the operation to backfill the highwall to the maximum extent technically practical.

These revised regulations were challenged in Round III of *In Re: Permanent Surface Mining Litigation II*, Civil Action No. 79–1144 (D.D.C. 1984). However, before that portion of the case was decided, the Secretary of the Interior, in a joint motion with the environmental plaintiffs (the National Wildlife Federation et al.), agreed to suspend the definition of *adverse physical impact* as well as the related regulations at 30 CFR 816.106(b) and 817.106(b). On December 3, 1984, the court entered an order approving the agreement.

As a result of the court order, on January 3, 1985 (50 FR 257), OSMRE suspended 30 CFR 816.106(b) and 817.106(b), and the definition of *adverse physical impact* at 30 CFR 701.5.

On June 13, 1985 (50 FR 24881), OSMRE proposed to amend its remining regulations to permanently remove the suspended provisions. A seventy-day public comment period was announced in the proposed rule, to close on August 22, 1985.

OSMRE received comments on the proposed rule from a total of six individuals and organizations, representing industry, citizens, environmental groups, and other government agencies. OSMRE has reviewed these comments carefully and has taken them into consideration in writing this final rule. No request was received for a public hearing or meeting, and none was held.

II. General Discussion

This rule removes from 30 CFR 701.5 the definition of *adverse physical impact.*

Also, it removes from 30 CFR 816.106 paragraph (b), which excepted from the backfilling and grading requirements of paragraph (a) those remining operations that would not cause an adverse physical impact. The introductory text of § 816.106 is redesignated as paragraph (a), and paragraph (a) is redesignated as paragraph (b).

Finally, this rule amends 30 CFR 817.106, which applies to underground mining, in the same way as it amends § 816.106.

As a result of this rule the exceptions in removed §§ 816.106(b) and 817.106(b) for operations that would not cause an adverse physical impact no longer apply. All remining operations covered by redesignated §§ 816.106 (a) and (b) and 817.106 (a) and (b) must comply with the specified backfilling and grading requirements.

OSMRE will interpret and enforce redesignated paragraphs (a) and (b) as described in the preamble to the rule under which they originally were promulgated. 48 FR 41720 (September 16, 1983). An operator who conducts remining operations will be responsible for those areas which he reaffects and/or redisturbs. Where a remining operation reaffects or enlarges a preexisting highwall, and all reasonably available spoil is insufficient to completely eliminate the highwall, the operator will be required to backfill the highwall to the maximum extent technically practical using all spoil generated by the remining operation and any other reasonably available spoil located in the permit area. Under this rule, additional highwall cuts and face up areas for underground mines on previously mined areas are assumed to reaffect or enlarge a preexisting highwall. Auger mining operations are covered under 30 CFR 819 and are not affected by this rule.

III. Responses to Comments

Section 705.1 Definitions

Adverse Physical Impact

A number of comments on the proposed rule concerned the removal from 30 CFR 701.5 of the definition of the term *adverse physical impact.* Since these comments typically pertained to removed §§ 816.106(b) and 817.106(b) as well, for convenience they are discussed below with the related comments on these latter sections.

Sections 816.106 and 817.106 Backfilling and grading: Previously mined areas

A number of comments on the proposed rule concerned the substance of, or proposed the amendment of, redesignated §§ 816.106 (a) and (b), and 817.106 (a) and (b). Since this rule does not affect the substance of these sections, these comments do not pertain to this rule, and further response by OSMRE is not appropriate. For guidance on how OSMRE will interpret and enforce amended §§ 816.106 and 817.106, see the preamble to the rule under which they originally were promulgated. 48 FR 41720 (September 16, 1983).

Removed §§ 816.106(b) and 817.106(b)

Agreement With Proposed Rule

Two commenters agreed with the intent of the proposed rule. Generally, they concluded that it was an important means to mitigate environmental degradation and physical hazards resulting from mining activity conducted prior to enactment of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* OSMRE agrees.

Consistency With the Act

Several commenters stated that the proposed rule was inconsistent with the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*

OSMRE disagrees. This rule is consistent with section 515(b)(3) of the Act, 30 U.S.C. 1265(b)(3), as interpreted in a related context in *In Re: Permanent Surface Mining Litigation II*, No. 79–1144, slip op. at 25–29 (D.D.C. July 6, 1984). There, the District Court upheld 30 CFR 819.19(b), which pertains to auger mining of previously mined areas, and is essentially the same as redesignated §§ 816.106(b) and 817.106(b). Thus, by removing the exception for operations that do not cause an adverse physical impact, this rule brings §§ 816.106 and 817.106 into conformance with a rule that has been challenged and upheld as lawful.

Interpretation of Redesignated Provisions

A number of commenters on the proposed rule asked for guidance on how to interpret the requirements of §§ 816.106 and 817.106 in the absence of the exception for operations that would not cause an adverse physical impact. As stated previously, OSMRE will interpret and enforce redesignated paragraphs (a) and (b) of §§ 816.106 and 817.106 as described in the preamble to the rule under which they originally were promulgated. 48 FR 41720 (September 16, 1983).

Due to diversity of circumstances under which a remining operation may reaffect or enlarge a pre-existing highwall, it is not possible to provide in advance specific guidance applicable to all situations. To the extent additional guidance may be needed by an operator, it will be provided by the regulatory authority during the permitting process on the basis of the information on remining that is submitted in a complete permit application.

Adverse Effect Not Relevant

One commenter concluded that under the proposed rule remining always would be viewed by OSMRE as causing an adverse effect on a highwall.

OSMRE disagrees. In removing from § 701.5 the definition of *adverse physical impact*, and removing from §§ 816.106 and 817.106 the exception in paragraphs (b) for operations that do not cause an adverse physical impact, OSMRE has eliminated from these backfilling and grading regulations any consideration of adverse effect. OSMRE will not and need not view remining under the rule as always causing an adverse effect because the requirements of amended §§ 816.106 and 817.106 do not depend on adverse affect. Under the relevant terms of redesignated paragraphs (b), the requirement to eliminate a pre-existing highwall to the maximum extent practical depends only on whether the highwall is "reaffected or enlarged."

IBSMA Decisions

One commenter asked OSMRE to explain how removal of the definition of *adverse physical impact* from § 701.5, and of the corresponding performance standards from §§ 816.106(b) and 817.106(b), was related to the decisions of the Interior Board of Surface Mining and Reclamation Appeals (the board) in *Cedar Coal Co. v. OSM*, 1 IBSMA 145 (April 20, 1979), and *Miami Springs Properties v. OSM*, 1 IBSMA 399 (Dec. 23, 1980). This commenter concluded that for these two decisions to have meaning a definition of the term *adverse physical impact* was necessary.

OSMRE disagrees. Notwithstanding any previous interpretation to the contrary, OSMRE has concluded that neither board decision applies to §§ 816.106 or § 817.106. *Cedar Coal Co.* and *Miami Springs Properties* interpret the OSMRE interim program regulations which required complete highwall elimination, while §§ 816.106 and 817.106 come under the permanent program, which differs in its specific requirements. Moreover, to the extent these decisions might be construed as applying to the permanent program, it is within the discretion of OSMRE to revise its regulations to negate their effect.

In *Cedar Coal Co.* the permittee, operating under an interim program permit, had removed overburden from the base of an orphaned highwall, resulting in new highwall exposures. The board, interpreting the OSMRE interim program regulations, found "no showing that Cedar's removal of overburden [had] resulted in any adverse physical impact on the orphaned highwall," and thus concluded that "this activity [had] not triggered any obligation on the part of Cedar to eliminate the highwall." 1 IBSMA at 155.

In *Miami Springs Properties* the board read *Cedar Coal Co.* as clearly implying "that a[n interim program] permittee who did disturb an orphaned highwall in such a way as to cause an adverse physical impact on the highwall might be responsible for its complete elimination." 2 IBSMA at 403.

The board decisions in *Cedar Coal Co.* and *Miami Springs Properties* interpret the interim program regulation on backfilling and grading at 30 CFR 715.14, which in paragraph (b)(1)(ii) requires the *complete* elimination of a reaffected pre-existing highwall. Both decisions interpret the highwall elimination requirement of § 715.14 as conditioned upon whether disturbance of the highwall causes an *adverse physical impact.*

Unlike § 715.14, the corresponding permanent program regulations at 30 CFR 816.102 and 817.102 authorize *less than complete* elimination of a pre-existing highwall in accordance with §§ 816.106 and 817.106, respectively. In appropriate circumstances, redesignated paragraphs (b) of these sections require an operator to eliminate a pre-existing highwall only to the maximum extent technically practical. Thus, the requirements of the permanent program for reclamation of a pre-existing highwall are significantly more flexible than those of the interim program.

Based on a previous interpretation of the board decisions in *Cedar Coal Co.* and *Miami Springs Properties*, OSMRE incorporated in previous §§ 816.106(b) and 817.106(b) (herein removed), an exception to the highwall elimination requirements for permanent program operations that do not cause an adverse physical impact. It is this exception that this rule removes, along with the related definition in § 701.5 of *adverse physical impact.*

In view of the greater flexibility afforded by the permanent program regulations, OSMRE has concluded that the Board's interpretation of the interim program regulation on backfilling and grading does not apply to the permanent program, and that it is not reasonable to include in §§ 816.106 and 817.106 an exception for operations that do not cause an adverse physical impact. OSMRE believes that in removing this exception this rule strikes a reasonable balance between protection of the environment and agricultural productivity and this country's need for coal.

Effect on Costs of Remining

Several commenters indicated that removing the exception for remining operations that do not cause an adverse physical impact would increase the cost and volume of spoil movement without any corresponding economic benefit from additional coal production.

OSMRE agrees that where the removed exception otherwise would have applied, remining operations may incur minor additional spoil-handling costs in complying with amended §§ 816.106 and 817.107. However, this rule does not impose any additional obligation on an operator to move spoil from outside the immediate vicinity of the remining operations, and any additional costs can readily be considered in assessing the economic feasibility of a particular remining operation.

The same commenter asked who would bear the cost of a worst case environmental impact, such as a landslide, that occurred during remining. The commenter stated that such costs are unpredictable and would hinder the remining of some areas.

In removing the exception for operations that do not cause an adverse physical impact, this rule does not affect a permittee's responsibility for unforeseen reclamation costs. Until the performance bond is released, a permittee will continue to be responsible for environmental problems that may occur on the permit area. Sound engineering design and operating practices should eliminate most costs of this type.

Finally, this commenter suggested that unplanned for, additional reclamation operations should be approved upon initial permit application to prevent after-the-fact costs to permittees.

OSMRE considered this suggestion, but did not adopt it since it would require the regulatory authority to give blanket approval to reclamation of an unknown nature which might never occur. Under such an approach the regulatory authority would have insufficient information to determine how the additional reclamation would be done, and thus insure that it would be environmentally sound.

Further Disincentives to Remining

One commenter stated that the proposed rule would create further disincentives to remining, and thus lessen the amount of reclamation and societal benefits which accrue from such activities. This commenter stated that the combined effect of the proposed rule and the court-mandated revision in the definition of *previously mined area* (See 51 FR 27508 (July 31, 1986)) would be to lessen the acreage of lands where the variances of §§ 816.106 and 817.106 were applicable. This commenter believed that the remining permittee should be responsible only for the additional impacts of remining, but not those from previous operations. This commenter concluded that under the rule reclamation that would have been accomplished at no cost to the taxpayer through remining would not be done, and that the resulting unreclaimed lands would continue to pollute and degrade the environment.

While this rule may result in some remining operations incurring minor additional spoil-handling costs in complying with amended §§ 816.106 and 817.106, OSMRE does not believe that there will be a significant impact on remining operations.

Thin Seam Mining

One commenter expressed concern that removing the exception for operations that do not cause an adverse physical impact might preclude the use of the technology known as *thin seam mining*. This commenter stated that removing spoil from the outslope of an old surface mine bench is technically practicable, but economically infeasible in a thin seam mining operation.

This rule is not likely to affect thin seam mining operations, which may be considered to be a form of auger mining. As such this type of mining operation will be covered by the performance standards found at 30 CFR 819. For a discussion of auger mining, see 48 FR 19314, 19321 (April 28, 1983).

Coordination With Other Rules

One commenter urged OSMRE to coordinate this rule closely with other related rules presently under consideration. This commenter cited the substantial, combined, potential impacts of these rules on the remining industry. OSMRE agrees, and is closely coordinating all of its rulemaking activities to insure a consistent, workable, regulatory scheme.

Immediate Vicinity

One comment on the proposed rule concerned the meaning of the term immediate vicinity, which is used in redesignated §§ 816.106(b) and 817.106(b), but is not defined. Since this rule does not affect either the meaning of this term or the substance of these sections, the comment does not pertain directly to this rule, and further response by OSMRE is not needed. For information on the meaning of this term, see the discussion of final § 816.106(a)(1) at 48 FR 41728 (September 16, 1983).

Previously Mined Area

One comment on the proposed rule concerned the definition in 30 CFR 701.5 of the term *previously mined area*. Although this term is used in redesignated §§ 816.106(a) and 817.106(a), this rule does not affect either its definition or the substance of these latter sections. Therefore, the comment does not pertain to this rule, and further response by OSMRE is not appropriate. For a recent OSMRE proposal to amend the definition of *previously mined area*, see 51 FR 27508 (July 31, 1986)

Reasonably Available Spoil

Several comments on the proposed rule concerned the definition in 30 CFR 701.5 of the term *reasonably available spoil*. Although this term is used in redesignated §§ 816.106(b) and 817.106(b), this rule does not affect either the definition of this term or the substance of these latter sections. Therefore, these comments do not pertain to this rule, and further response by OSMRE is not appropriate. For a discussion of the definition of this term, see 48 FR 41720 (September 16, 1983), and 47 FR 51316 (November 12, 1982).

IV. Procedural Matters

Federal Paperwork Reduction Act

This rule contains no new information collection requirements. The information collection requirements in the affected sections of the previous rules were submitted to the Office of Management and Budget under 44 U.S.C. and 3507 and assigned clearance numbers 1029–0047 (Part 816), and 1029–0048 (Part 817).

Executive Order 12291

The Department of the Interior (DOI) has examined this rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not a major rule and does not require a regulatory impact analysis. Any negative economic impact on coal operators will be offset by a corresponding positive impact on the environment and public health and safety.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., that this final rule will not have a significant economic impact on a substantial number of small entities. This rule may impact a relatively small number of coal operators, the majority of which will not be small entities.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) for this rule, and has made a finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The EA and finding of no significant impact are on file in the administrative record for this rule in the OSMRE Administrative Record Room at 1100 L Street, NW., Washington, DC.

Author

The principal author of this rule is Raymond E. Aufmuth, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue N.W., Washington, D.C., 20240; Telephone: 202-343-5843 (Commercial or FTS).

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

Accordingly, 30 CFR Parts 701, 816 and 817 are amended as set forth below:

Dated: October 24, 1986.

J. Steven Griles,

Assistant Secretary for Lands and Mineral Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 continues to read as follows:

Authority: Pub. L. 95-87, 91 Stat 445 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

§ 701.5 [Amended]

2. Section 701.5 is amended by removing the definition of "Adverse physical impact".

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

3. The authority citation for Part 816 continues to read as follows:

Authority: Pub. L. 95-87, 91 Stat 445 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

§ 816.106 [Amended]

4. Section 816.106 is amended by removing paragraph (b), redesignating the introductory text as paragraph (a), and redesignating paragraph (a) as paragraph (b).

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

5. The authority citation for Part 817 continues to read as follows:

Authority: Pub. L 95-87, 91 Stat 445 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

§ 817.106 [Amended]

6. Section 817.106 is amended by removing paragraph (b), redesignating the introductory text as paragraph (a), and redesignating paragraph (a) as paragraph (b).

[FR Doc. 86-25966 Filed 11-17-86; 8:45 am]

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federal register

Tuesday
November 18, 1986

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Area; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-34]

Establishment of Airport Radar Service Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates an Airport Radar Service Area (ARSA) at Bates Field, Mobile, AL. The location designated is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of the ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations, Service Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985 the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 66 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On July 18, 1986, the FAA proposed to designate an ARSA at Bates Field, Mobile, AL, (51 FR 26116). This rule designates an ARSA at this airport. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held an informal airspace meeting for this proposed airport. In response to public comments received the FAA has modified this proposal.

Discussion of Comments

The FAA has received comments on the basic ARSA program as well as comments directed toward the proposed individual designation. Additionally, several of the comments on individual designation are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments, the second addresses comments on the proposal at Mobile.

ARSA Program Comments

Aircraft Owners and Pilots Association (AOPA) and others comments that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notice, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRAS procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should be expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

Several commenters, including AOPA, disagreed with the FAA's conclusion that the additional air traffic could be accommodated with existing manpower at locations where TRAS participation was low. The FAA's conclusion for the total program was in part based upon the fact that participation in the existing TRSA's was quite high and, therefore, an increase from the present levels to 100% would not be a significant change. The commenters, while not agreeing with this conclusion, claimed that the FAA's rationale did not apply where participation was low and thus additional manpower would be needed at these locations if ARSA was designated. The FAA recognizes that participation in the TRSA program is relatively low at some of the candidate locations. However, this is in large part due to the controller's walkout of 1981 and the subsequent reduction in fully qualified controllers which led to the discontinuance of TRSA services. A sufficient number of controllers is assigned at the facilities to which the commenters refer and those facilities are ready to provide the service to the increased number of pilots. This factor was considered by the FAA in its initial evaluation of the ARSA program.

The Soaring Society of America (SSA) objected to the ARSA program because it does not provide the same level of safety and service to all clauses of aviation. As with other regulations, this rule affects different operators in different ways depending on their respective need to operate in controlled airspace or near the airports involved. The FAA does not agree that this variation in impact is reason not to adopt a rule which benefits the majority of users.

The SSA claims the FAA is changing the criteria that an operating control tower is the only requirement for an airport to be eligible for an ARSA. The FAA has not departed from the NAR criteria which would replace TRSA with ARSA at airports with an operating control tower served by a level III, IV, or V Radar Approach Control Facility.

The SSA claimed that the ARSA rule should state that the ultimate responsibility for separation from other aircraft operating in visual flight rule (VFR) conditions rests with the pilot. While the FAA agrees that such is the

case, the agency does not agree that the ARSA rule must so state. Unless a new or amending provision to the Federal Aviation Regulations (FAR) specifically deletes, amends, or supersedes existing sections, the existing regulations still apply. The ARSA rule (50 FR 9252, 9257, March 6, 1985) did not alter the sections of the FAR that establish that level of responsibility.

AOPA faulted that FAA's implementation of the ARSA program. The FAA stated in the proposal that the benefits of standardization and simplicity were nonquantifiable, and that the safety benefits anticipated by the FAA were not attributable to any given candidate but were based upon implementation of the program on a national basis. According to AOPA this evidenced the need to further evaluate the program at the current locations so that benefits could be individually assessed and each candidate evaluated accordingly. The FAA does not agree. The benefits of standardization and simplicity would always be nonquantifiable regardless of the amount of evaluation, yet they received considerable emphasis by the NAR Task Group. Overall national midair collision accident rates are relatively low, and accident rates within individual categories of airspace are lower still. Additionally, accidents at specific locations are random occurrences. Therefore, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Additionally, the FAA does not believe that these considerations should be cause for delaying a program that was recommended by a majority of the members of the National Airspace Review, and which has already produced positive results at most of the designate locations.

Numerous commenters also objected to the proposals based upon their belief that the volume of air traffic in several of the proposed locations was too great for the ARSA program. The FAA believes that such a point argues strongly for the establishment of an ARSA rather than the converse.

Some commenters, including AOPA, predicted that user costs incurred due to delay will be greater than was estimated by the FAA, and that these costs will be experienced more at some sites than at others. In the NPRM, FAA acknowledged that initial delays problems would vary from site to site, that estimates of delays where quite preliminary, that at some facilities the transition process is expected to go very smoothly, and that at other sites delay problems will dominate the initial adjustment period. These cost estimates are expected to be transitory in nature in that actual delays will be reduced as pilots and controllers become experienced with ARSA procedures. This has been the case at the three locations were ARSA has been in effect for an appreciable period, and is the trend at those locations more recently designated.

AOPA discounted the FAA delay estimates claiming that they were based upon a standard ARSA. The FAA does not agree. FAA's preliminary delay estimates were based upon the ARSA proposed for the individual locations, whether standard or modified.

Several comments claimed that some aircraft would have to purchase two-way radios in order to enter the ARSA and land at or depart from airports within the ARSA. The FAA does not agree. Each primary airport receiving ARSA designation has an airport traffic area requiring two-way radio communications at present. Therefore, no additional cost will be incurred for purchase of radios for aircraft landing at or departing from primary airports receiving ARSA designation.

Further, some commenters, including AOPA, expressed concern that older 360 channel transceivers would not be adequate to operate within an ARSA. Frequencies compatible with 360 channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collision, the commenters claimed that compression would increase the impact of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is reduced in an ARSA compared to the current TRSA. This has been the experience of the FAA at the current ARSA facilities.

AOPA claims that since the communications and readback procedures in ARSA's do not differ from those utilized in TRSA's there would be no reduction in "frequency time" needed for each pilot to acknowledge instructions or information, and thus, the partial offset indicated by the FAA was not justified. The offset is based upon fewer as well as shorter transmissions for each pilot, thus the FAA does not agree with this claim.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore/Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting computer data to determine if compression was occurring. Additionally, the FAA has continually monitored for the possibility of compression at all recently designated locations. Compression has not been detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere. Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necessary.

AOPA, SSA, and other commenters claimed that the FAA provided no demonstrable evidence that the ARSA program would improve aviation safety. The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated areas. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved, and thus, safety will be improved.

AOPA, and several other commenters, requested that VFR corridors be established at several of the subject locations along routes that are currently contained within an airport traffic area (ATA). The NAR Task Group noted in their evaluation of the TRSA program that under FAR § 91.87 pilots operating under VFR to or from a satellite airport within an ATA are excluded from the two-way radio communications requirement. The Task Group noted that

this was acceptable until the volume of air traffic at the primary airport dictated the installation of a radar approach control. The Task Group recommended, and the FAA adopted, the ARSA program as a safety improvement addressing this problem. Thus, the FAA does not believe provisions for VFR corridors that penetrate an ATA in most cases are warranted or in keeping with that recommendation.

SSA claimed that the grouping of ARSA's such as that adopted in the Sacramento Valley area would create "squeezing" of traffic in the corridors between the blocks of ARSA airspace. One area in question, between Sacramento and Beale Air Force Base (AFB), is approximately 20 miles wide. The FAA does not agree that "squeezing" will occur in this area. Additionally, other user organizations have requested VFR corridors between adjacent or grouped ARSA's and these ARSA's have been modified to accommodate this request.

AOPA and others commented that several of the proposals will require pilots to violate FAR 91.79 (14 CFR 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below . . . an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. Namely, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and secondly, a pilot may deviate 2,000 feet horizontally from the obstacle.

Furthermore, AOPA claims that the above response does not adequately respond to the issue. They claim that deviations of 2,000 feet horizontally would increase workload and reduce the efficiency of see-and-avoid, and thus, potentially reduce safety. The FAA does not encourage deviation but encourages participation which will not require deviation and will result in controllers providing radar assistance for see-and-avoid.

Several commenters noted that the proposal did not contain an environmental asseesment. Under existing environmental regulations the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an environmental assessment. The agency environmental regulations have not yet been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of ARSA designation fall between those of the TCA and TRSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, the Experimental Aircraft Association (EAA), and other commenters indicated that the FAA had failed to demonstrate a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted some of the features of the ARSA. Most of these comments went beyond the scope of the subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1–2.2 (50 FR 9252, March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA program in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making their recommendation to the FAA. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, SSA, and others commented that several of the proposed ARSA's failed to meet the criteria for designation. The criteria for this airport was recommended by the NAR Task Group and adopted by the FAA. Namely, ". . . excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location." (49 FR 47184, November 30, 1984).

AOPA, EAA, and others commented that the existence of a TRSA in the above mentioned category should not be considered as justification for an ARSA. After a review of all comments received to the above referenced proposal, the FAA adopted that NAR recommendation (50 FR 9252, March 6, 1985). Therefore, absent a finding that designation would be inappropriate, the existence of a TRSA within that criteria is deemed sufficient for designation.

AOPA, EAA, and others indicated that several of the proposed locations do not meet the criteria that the FAA is considering for future ARSA candidates. The FAA has adopted criteria for future application. However, whatever the nature of any follow-on criteria adopted, this group of locations which qualify as ARSA candidates under the adopted NAR criteria would not be affected.

Several commenters suggested the top of the ARSA be lowered from 4,000 feet above field elevation. Absent strong justification for lowering this altitude, the FAA has not adopted these recommendations. The agency's rationale for nonadoption is set forth immediately above.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with that assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadblock to improvement.

Several commenters claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the NAR itself have recommended that the FAA adopt nautical-mile descriptions rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

Several commenters objected to proposals where the ARSA was in proximity to other airports. According to these commenters pilots would not

know whether they should be in contact with the ARSA approach control facility or in contact with the control tower at the secondary airport, or on unicom. The FAA does not view this situation as different from that existing at many of these locations today. Through pilot education programs and experience with ARSA procedures this situation will improve. Also, as at present, when a pilot contacts the wrong FAA facility the controllers will give appropriate instructions.

AOPA, SSA, and other commenters objected to several of the proposed ARSA's based upon the claim that the FAA had failed to evaluate the cumulative effect of the proposed ARSA's and other regulatory airspace. The evaluation for each ARSA included all factors known to the FAA, including the proximity of other regulatory airspace.

Underlying a great many of the comments received was the idea that some provision should be made so that pilots could continue their current practices without contacting the responsible ASTC facility. While the FAA has made modifications from the standard ARSA in cases where circumstances warrant, the basic thrust of the ARSA program is to require two-way communication with the responsible approach control facility, and not to make modifications in the program to provide for nonparticipation.

AOPA commented that FAA underestimated the one-time cost of distributing Letters to Airmen and the Advisory Circular, and neglected costs related to the informal public meetings. Both of these issues were discussed in the detailed regulatory evaluation of the NPRM, which has been available in the regulatory docket since publication of the NPRM. The availability of this detailed evaluation was indicated in the introductory paragraph of the regulatory evaluation summary included in the **Federal Register** NPRM (51 FR 26116, July 18, 1986). AOPA's comments assumed that every active pilot would be notified at least once. However, FAA intends to mail individual Letters to Airmen only to those pilots living in the vicinity of ARSA sites, and consequently its cost estimate is less than that of AOPA. The total one-time cost of distributing Letters to Airmen and the Advisory Circular was also prorated to reflect only those sites included in the notice, and both total and prorated cost estimates were provided in the notice. Further, as FAA indicated in the detailed regulatory evaluation, the expenses associated with public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, and consequently these expenses are more appropriately considered sunken costs attributable to the rulemaking process rather than implementation costs of the ARSA program. Similarly, information on ARSA's following the establishment of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and, therefore, will not involve additional costs strictly as a result of the ARSA program.

Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

SSA faulted the FAA for using the aviation safety seiminars for pilot education on ARSA's. They claim these seminars do not reach many pilots and the seminars are reserved during this year for the FAA "Back to Basics" program. The FAA does not agree. The aviation safety seminars are for all pilots and for education on all aspects of aviation which would include the ARSA program.

SSA commented that the FAA should take into consideration the unique operating characteristics of gliders in defining the ARSA airspace at some locations. The FAA has modified the configurations of the ARSA at locations where glider operations would be adversely affected by a standard configuration.

Numerous commenters objected to the ARSA designations claiming they would simply provide the FAA with the basis for additional regulatory restrictions. The FAA does not believe this to be a valid objection. While the agency has no current plans for further regulatory action which imposes additional restrictions, such action if it should ever become a reality would be the subject of additional rulemaking and would of necessity be judged on its own merits, as should these proposals.

The Air Line Pilots Association (ALPA) concurred with the proposal as an improvement in operational efficiency and a significant contribution to a reduction of midair collision potential.

The Air Transport Association (ATA) endorsed the proposed designations as an improvement in safety with specific comments indicated below.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding some deviation from the standard model.

Comments were received which were supportive of each of the ARSA's addressed here as an improvement in aviation safety, and stating that participation by all pilots was only equitable and that normal safety concerns dictated mandatory two-way communications. The FAA agrees.

Comments on Bates Field, Mobile, AL

One commenter claimed that to avoid misunderstanding of rules near the Brookley Airport, the Airport Traffic Area (ATA) for Brookley should be shown on the charts or the airspace cutout of the ARSA. The FAA does not agree. The FAA does not depict ATA's on charts since all dimensions are standard throughout the United States. Cutouts are not normally made for controlled airports underlying a shelf of the ARSA. The ARSA airspace is regulatory and takes precedence over the ATA. Use of this airspace will be mutually agreed to by the facilities involved.

Several commenters requested a cutout for St. Elmo Airport which is located approximately 12 miles south of Bates Field. The FAA does not agree in that St. Elmo is beyond the lateral limits of the ARSA.

The Gulf Coast Chapter 479 of EAA commented that the tops of the ARSA and the ATA should be the same. FAA rulemaking action is being considered which would designate a common top for ATA's and ARSA airspace. However, this action is not being taken as part of the adoption of the ARSA at Mobile, AL.

The Gulf Coast Chapter 479 of EAA also stated that they support efforts to improve air safety around busy terminal areas. They state that the simplification and uniformity of radar airspace is a step in the right direction.

The SSA stated that they are not aware of any glider operations in proximity to the Mobile area. However, they request that, if any glider operations wish to locate in an area near the Bates Field ARSA, that local FAA personnel work closely with them to lessen any impact on local or cross country operations. The FAA agrees and will continue to cooperate with local

glider operations to ensure safety with the minimum impact on both operations.

The ATA responded in support of the Bates Field ARSA as a definite improvement in safety for all pilots.

One commenter stated that of all the proposed ARSA's of which he is aware, Mobile is probably the simplest and best located.

Other comments were received which were general in nature and were discussed under general comments.

Other comments

A number of other comments were received addressing matters beyond the scope of these proposals such as charting, the number of frequencies depicted on a chart, the general design features of an ARSA, etc. The FAA will give consideration to all of the points raised in these comments but will not address them as a part of this rulemaking.

Regulatory Evaluation

Those comments which addressed information presented in the Regulatory Evaluation of the notice for this docket included in this final rule have been discussed above. A copy of the final Regulatory Evaluation has been placed in the docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA site established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of this ARSA site will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA site established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding almost every satellite airport located within the 5-mile ring to avoid adversely impacting their operations, and in some cases will achieve the same purpose through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreement between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates an Airport Radar Service Area (ARSA) at Bates Field, Mobile, AL. The location designated is a public airport at which a nonregulatory Terminal Radar Service Area is currently in effect. Establishment of this ARSA will require that pilots maintain two-way radio communication with ATC while in the ARSA. Implementation of ARSA procedures at the affected location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regualtion (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Bates Field, Mobile, AL— [New]

That airspace extending upward from the

surface to and including 4,200 feet MSL within a 5-mile radius of Bates Field (lat. 30°41'23" N., long. 88°14'31" W.); and that airspace extending upward from 1,500 feet MSL to and including 4,200 feet MSL within a 10-mile radius of Bates Field. This airport radar service area is effective during the specific days and hours of operation of Mobile Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Washington, DC., on November 13, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-26021 Filed 11-17-86; 8:45 am]

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federal register

Tuesday
November 18, 1986

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Areas; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-41]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Airport Radar Service Areas (ARSA) at the Allentown-Bethlehem-Easton Airport, Allentown, PA, and the Kahului Airport, Kahului, HI. Each location is a public airport at which a nonregulatory Terminal Radar Service Area (ARSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before March 4, 1987. Informal airspace meeting dates are as follows:

Allentown-Bethlehem-Easton Airport, PA—January 28, 1987

Kahului Airport, HI—January 20 and 21, 1987

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 86-AWA-41, 800 Independence Avenue, SW., Washington, DC 20591.

Informal airspace meeting places are as follows:

Allentown-Bethlehem-Easton Airport, PA, ARSA

Time: 7:00 p.m.
Location: UGI Corporation, Hospitality Hall, 2121 City Line Road, Bethlehem, PA

Kahului, HI, ARSA

January 20, 1987

Time: 7:00 p.m.
Location: Pagoda Hotel, 1525 Rycroft Street, Honolulu, HI

January 21, 1987

Time: 7:00 p.m.
Location: Kahului Public Library, Conference Room, 90 School Street, Kahului, HI

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice involves two locations. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-41." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold informal airspace meetings for all proposed ARSA locations in order to receive additional input with respect to the proposal. The schedule of times and places of the hearings is listed above. No individual meetings will be held at the same time on separate locations in the same region, so that commenters will be able to attend all meetings in which they may have an interest. Persons who plan to attend any of the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The dates, times, and places for each meeting are listed above. There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of any meeting is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at each meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings may be submitted to the FAA representative. Participants submitting handout materials should present an original and two copies to the presiding officer before distribution. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion.

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR

17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR were the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace. NAR Task Group 1–2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD, (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended this criteria consider—among other things—traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and circularized through the FAA directives system.

The FAA has established ARSA's at numerous locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's.

Related Rulemaking

This notice proposes ARSA designation at two of the locations identified as candidates for an ARSA in the preamble to Amendment No. 71–10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the **Federal Register.**

The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at each of the locations at which ARSA's are proposed in this notice. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a feeling shared among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at the Allentown-Bethlehem-Easton Airport, Allentown, PA, and the Kahului, Airport, Kahului, HI.

Each of the above locations is a public airport at which a nonregulatory TRSA is currently in effect. The proposed locations are depicted on charts in Appendix 1 to this notice.

The FAA has published a final rule (50 FR 9252; March 6, 1985) which defines ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The final rule provides in part that any aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitutde of 4,000 feet above that

airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, §§ 71.14 and 71.501, and Part 91, §§ 91.1 and 91.88.

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA has conducted a detailed Regulatory Evaluation of the proposed establishment of additional ARSA sites. The major findings of that evaluation are summarized below, and the full evaluation is available in the regulatory docket.

a. Costs

Costs which potentially could result from the ARSA program fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA rather than a TRSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the ARSA program can be implemented without requiring additional controller personnel above current authorized staffing levels because participation at most TRSA locations is already quite high, and the reduced separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours, and existing TRSA facilities already operate the necessary radar equipment, FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA is modifying its terminal radar procedures in the ARSA program in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to remove TRSA airspace depictions and incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

Much of the need to notify the public and educate pilots about ARSA operations will be met as a part of this rulemaking proceeding. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. Because the expenses associated with these public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, they are more appropriately considered sunken costs attributable to the rulemaking process rather than costs of the ARSA program. Once the decision has been made to establish an ARSA through a final rule issued in this proceeding, however, any public information costs which follow are strictly attributable to the ARSA program. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA will also issue an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular cost for the two airports at which ARSA's are being proposed by this notice is estimated to be approximately $900. This cost will be incurred only once upon the initial establishment of the ARSA's.

Information on ARSA's following implementation of the program will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and therefore will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA to allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participating airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA ywill permit. This has been the experience at the three locations where ARSA's have been in effect for the longest period of time, and is the trend at most of the locations that have been more recently designated.

The FAA does not expect that any operators will find it necessary to install radio transceivers as a result of establishing the ARSA's proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and

therefore will not incur any additional costs as a result of the proposed ARSA's. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impacts will occur at the candidate ARSA sites proposed in this notice.

b. Benefits

Much of the benefit that will result from ARSA's is nonquantifiable, and is attributable to simplification and standardization of ARSA configurations and procedures, which will eliminate much of the confusion pilots currently experience when operating in nonstandard TRSA's. Further, once experience is gained in ARSA operations, the greater flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic more efficiently than they currently are able to under TRSA's. These expected savings may or may not offset the delay that some sites may experience after the initial establishment of an ARSA, but are expected to eventually provide overall time savings to all traffic, IFR as well as VFR, that exceed delay as both pilots and controllers become more familiar with ARSA operating procedures.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in this notice will contribute to these improvements in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at new ARSA locations will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition to these operational efficiency improvements, establishment of the proposed ARSA sites will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits that will far exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The small entities that could be potentially affected by implementation of the ARSA program are the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude almost every satellite airport located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations, and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use

aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Allentown-Bethlehem-Easton Airport, PA—[New]

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of the Allentown-Bethlehem-Easton Airport (lat. 40°39'11" N., long. 75°26'25" W.), excluding that airspace within a 1-mile radius of the Queen City Municipal Airport, Allentown, PA, (lat. 40°34'13" N., long 75°29'19" W.) and that airspace extending upward from 2,200 feet MSL to 4,400 feet MSL within a 10-mile radius of the Allentown-Bethlehem-Easton Airport from the 020° T (030° M) bearing from the airport clockwise to the 215° T (225° M) bearing from the airport and that airspace extending upward from 1,900 feet MSL to 4,400 feet MSL within a 10-mile radius of the airport from the 215° T (225° M) bearing from the airport clockwise to the 285° T (295° M) bearing from the airport and that airspace extending upward from 2,800 feet MSL to 4,400 feet MSL within a 10-mile radius of the airport from the 285° T (295° M) bearing from the airport clockwise to the 020° T (030° M) bearing from the airport.

Kahului Airport, HI—[New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Kahului Airport (lat. 20°54' 07" N., long. 156° 25' 59" W.), and that airspace extending upward from 2,000 feet MSL to 4,100 feet MSL within a 10-mile radius of Kahului Airport from the 289° T (300° M) bearing from the airport clockwise to the 069° T (080° M) bearing from the airport and that airspace extending upward from 2,000 feet MSL to 4,100 feet MSL within a 10-mile radius of the airport from the 149° T (160° M) bearing from the airport clockwise to the 199° T (210° M) bearing of the airport. This airport radar service area is effective during the specific days and hours of operation of Kahului Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Washington, DC, on November 12, 1986.

Daniel J. Peterson,

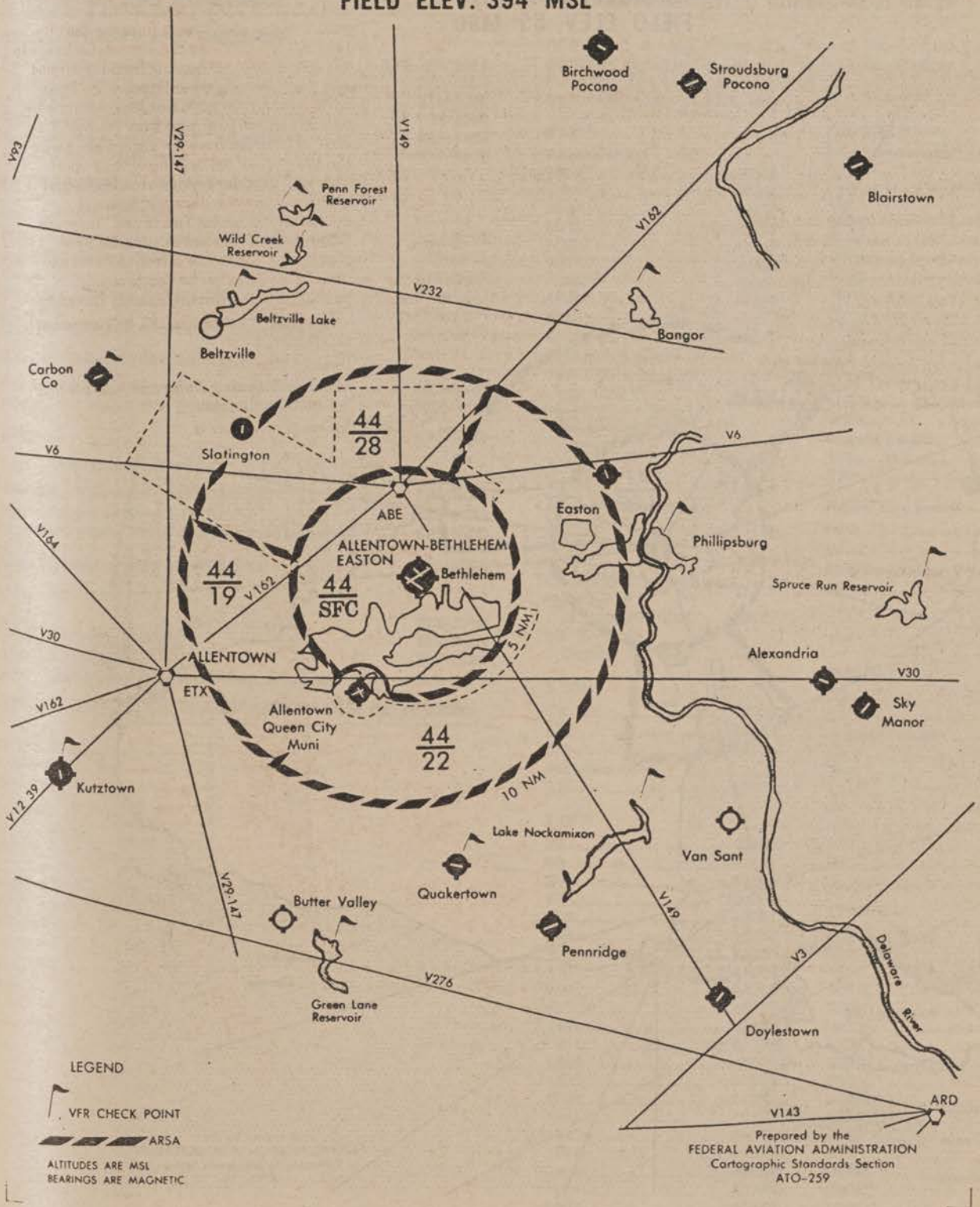
Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910–13–M

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

ALLENTOWN, PENNSYLVANIA
ALLENTOWN-BETHLEHEM-EASTON AIRPORT
FIELD ELEV. 394' MSL



LEGEND

VFR CHECK POINT

ARSA

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BEARINGS ARE MAGNETIC

Prepared by the
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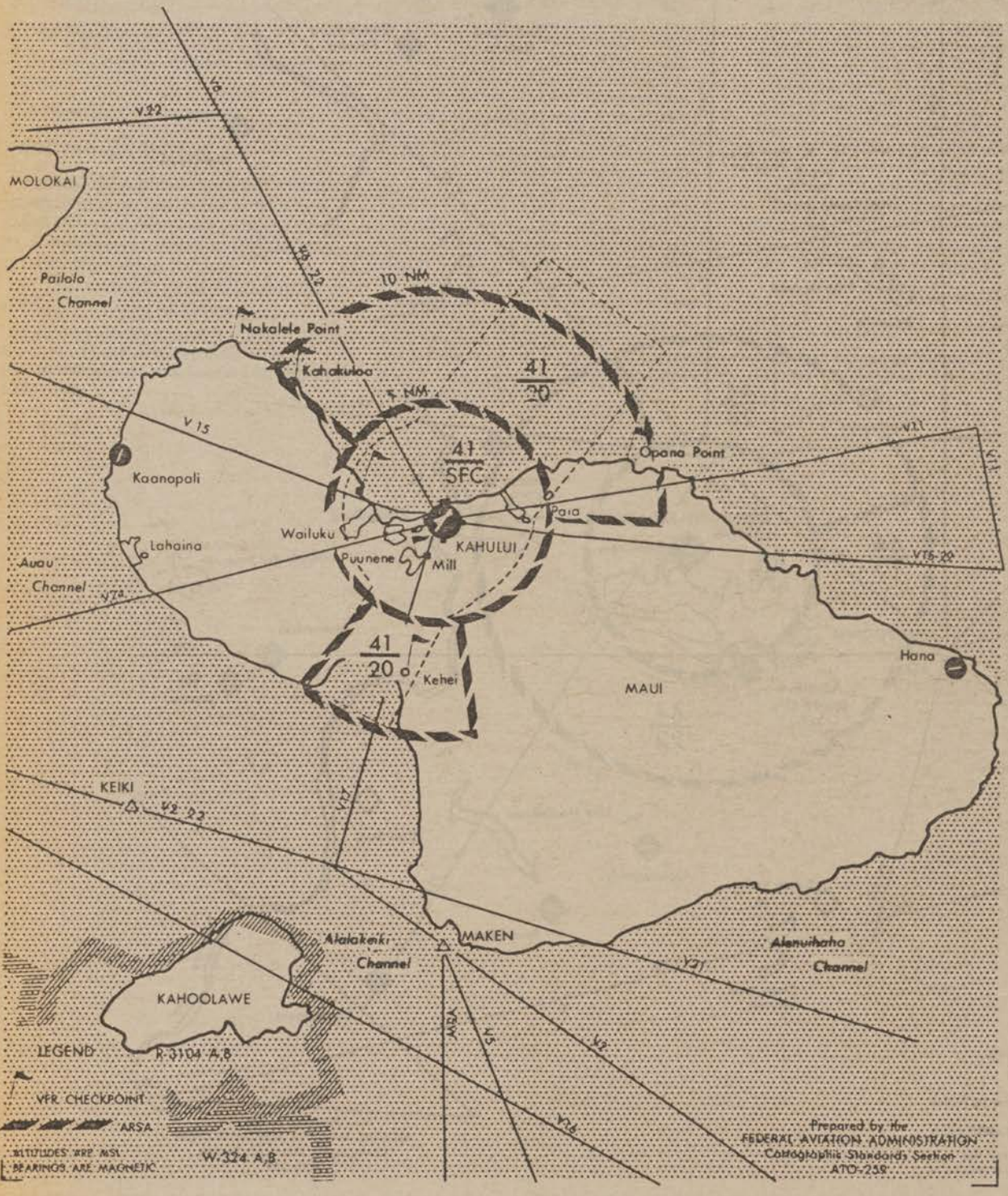
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

KAHULUI, HAWAIIAN ISLANDS
KAHULUI AIRPORT
FIELD ELEV. 53' MSL



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Tuesday, November 18, 1986

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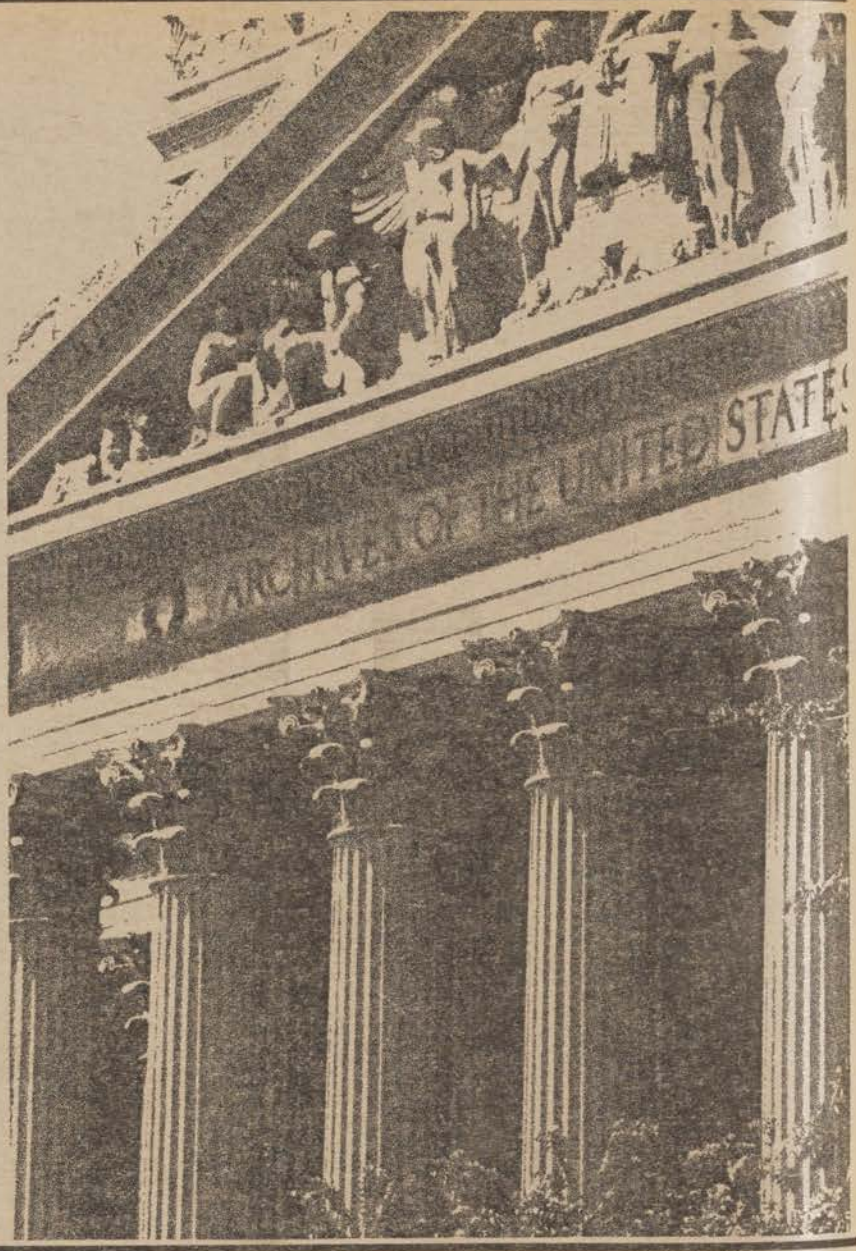

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